

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

L Lin Wood

L Lin Wood PC
1201 West Peachtree Street NW
Atlanta, GA 30309
404-891-1402
Fax: 404-506-9111
E-mail: Lwood@linwoodlaw.com

Matt C Wood

Weisbart Springer Hayes LLP
212 Lavaca Street Suite 200
Austin, TX 78701
512-652-5780
Fax: 512-682-2074
E-mail: Mwood@wshllp.com

G Taylor Wilson

L Lin Wood PC
1180 West Peachtree Street
Atlanta, GA 30309
404-891-1402
Fax: 404-506-9111
E-mail: Twilson@linwoodlaw.com

R Christopher Chatham

Chatham Law Group
3109 West Temple Avenue
Los Angeles, CA 90026
213-277-1800
E-mail: Chris@chathamfirm.com

Jonathan D Grunberg

L Lin Wood PC
1180 West Peachtree Street
Atlanta, GA 30309
404-891-1402
Fax: 404-506-9111
E-mail: Jgrunberg@linwoodlaw.com

(APPEARANCES CONTINUED ON NEXT PAGE)

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:**Nicole Jennings Wade**

L Lin Wood PC
1880 West Peachtree Street
Atlanta, GA 30309
404-891-1402
Fax: 404-506-9111
E-mail: Nwade@linwoodlaw.com

ON BEHALF OF THE DEFENDANT:**Alexander Spiro**

Quinn Emanuel Urquhart and Sullivan LLP
51 Madison Avenue 22nd Floor
New York, NY 10010
212-849-7000
Fax: 212-849-7100
E-mail: Alexspiro@quinnemanuel.com

Michael T Lifrak

Quinn Emanuel Urquhart and Sullivan LLP
865 South Figueroa Street 10th Floor
Los Angeles, CA 90017
213-443-3675
Fax: 213-443-3100
E-mail: Michaellifrak@quinnemanuel.com

Robert M Schwartz

Quinn Emanuel Urquhart and Sullivan LLP
865 South Figueroa Street 10th Floor
Los Angeles, CA 90017
213-443-3675
Fax: 213-443-3100
E-mail: Robertschwartz@quinnemanuel.com

William C Price

Quinn Emanuel Urquhart and Sullivan LLP
865 South Figueroa Street 10th Floor
Los Angeles, CA 90017-2543
213-443-3000
Fax: 213-443-3100
E-mail: Williamprice@quinnemanuel.com

(Appearances continued on next page)

A P P E A R A N C E S

ON BEHALF OF THE DEFENDANT:

Ellyde R Thompson

Quinn Emanuel Urquhart and Sullivan LLP
51 Madison Avenue 22nd Floor
New York, NY 10010
212-849-7000
Fax: 212-849-7100
E-mail: Ellydethompson@quinnemanuel.com

Jeanine Zalduendo

Quinn Emanuel Urquhart and Sullivan LLP
865 South Figueroa Street 10th Floor
Los Angeles, CA 90017-2543
213-443-3000
Fax: 213-443-3100
Jeaninezalduendo@quinnemanuel.com

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1 WEDNESDAY, DECEMBER 4, 2019

9:00 A.M.

2 ~ ~ ~

3 JURY TRIAL - DAY TWO

4 MORNING SESSION ONLY

08:55:09 5 ~ ~ ~

09:11:04 6 **THE COURT:** Good morning, everyone.

09:11:05 7 Before the jury comes back, I did consider
09:11:10 8 the defendant's motion regarding the use of the deposition as
09:11:21 9 argued yesterday, and unfortunately, there was such an
09:11:26 10 avalanche of pleadings filed on Monday, to be frank, your
09:11:32 11 argument got lost among all your other arguments. We didn't
09:11:37 12 give it as much of an examination as we should have.

09:11:43 13 But we have now, and I think your argument
09:11:46 14 has merit, and I think there is an effort by the plaintiff to
09:11:57 15 go beyond the pretrial order in the sense that the Court made
09:12:03 16 it clear that the BuzzFeed article is not the subject of
09:12:10 17 defamation in the case. And I'm forewarning the plaintiff
09:12:20 18 that when it comes to final argument, if there is an effort
09:12:25 19 at blurring, it will be my obligation to straighten it out.
09:12:32 20 And I'll be listening very carefully.

09:12:35 21 But I haven't had a complete opportunity to
09:12:38 22 look at your motion, and if ultimately it is with merit, I
09:12:46 23 will consider a motion to strike.

09:12:50 24 **MR. SPIRO:** Thank you, Your Honor.

09:12:51 25 **THE COURT:** That's all I want to say about that

09:12:53 1 now. Nothing further. Nothing further.

09:12:57 2 **MR. WOOD:** Not on that point, Your Honor.

09:12:59 3 **THE COURT:** You got up, and I don't want any
09:13:01 4 comment further at this point.

09:13:02 5 Now, the other point I want to make, because
09:13:05 6 we are in the examination of Mr. Musk, is that -- when we get
09:13:16 7 to recross, recross doesn't open the floodgates once again.
09:13:22 8 We spent -- I think he started testifying at 1:00 o'clock or
09:13:28 9 thereabouts on -- yesterday, finished at 5:00, it was a full
09:13:33 10 afternoon. I'm not setting time limits, but there are
09:13:38 11 limits.

09:13:39 12 So, when Mr. Spiro finishes his direct
09:13:52 13 examination, as I said, there can be recross, but the recross
09:13:55 14 only relates to any new matters that Mr. Spiro raised or any
09:14:02 15 matters that need some amplification.

09:14:06 16 There may have -- there may be that matter
09:14:11 17 that you brought to my attention at the end of your
09:14:16 18 cross-examination that I said you could raise, escapes me
09:14:22 19 right now, but it's a limited matter.

09:14:25 20 So, I'm going to bring the jury in here.
09:14:29 21 Let's get to it, make some progress.

09:14:32 22 **MR. WOOD:** Your Honor, I have an issue on a
09:14:34 23 different subject matter I want to bring up with you before
09:14:36 24 the jury comes in.

09:14:37 25 **THE COURT:** What is it?

09:14:38 1 **MR. WOOD:** I want to make a proffer about the

09:14:42 2 Judge's sustaining the objection to the question about

09:14:45 3 whether Tesla would hire a pedophile. I believe that I can

09:14:55 4 make a proffer for the record, and then the Judge -- you will

09:14:55 5 say "yes" or "no," and then I'll move on, but I need to make

09:14:56 6 a record on it before he steps down.

09:14:58 7 **THE COURT:** Don't make it now, because the jury

09:15:00 8 will come back. I will give you a full opportunity at the

09:15:03 9 next recess to make that proffer.

09:15:05 10 You may be seated.

09:15:06 11 Bring the jury in.

09:16:26 12 We can take appearances.

09:16:27 13 Can I state for the record, just to avoid the
09:16:31 14 niceties, the parties are present with counsel?

09:16:35 15 **MR. SPIRO:** Yes, Your Honor.

09:16:37 16 **THE COURT:** Everyone agree? Okay, done.

09:17:07 17 (Following proceedings were held in the presence
09:17:10 18 of the jury.)

09:17:10 19 **THE COURT:** Good morning, members of the jury.
09:17:15 20 Thank you very much for making a special effort on a nasty
09:17:18 21 morning to get here on time. I noticed that you all were
09:17:21 22 here on time, and everyone appreciates that.

09:17:23 23 We're ready to resume.

09:17:26 24 **MR. SPIRO:** Thank you.

09:17:26 25 DEFENDANT, ELON MUSK, PREVIOUSLY SWORN

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09:18:02 12
09:18:02 13
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09:18:27 25

DIRECT EXAMINATION

BY MR. SPIRO:

Q. Good morning, Mr. Musk.

A. Good morning.

Q. When we left off, we were talking about how you became involved in the rescue operation in Thailand.

Can I ask you, did the Thai authorities know you were coming to help?

A. Yes.

MR. SPIRO: And I would at this time have the witness take a look at 529.

THE WITNESS: Shall I look in this book?

BY MR. SPIRO:

Q. Yes.

A. Okay.

MR. WOOD: No objections.

MR. SPIRO: And we would offer that with no objection from the plaintiff.

THE COURT: Received.

(Exhibit No. 529 admitted into evidence.)

BY MR. SPIRO:

Q. 563, if you could take a look, Mr. Musk?

A. Yes. 529 and 563.

MR. WOOD: No objection.

MR. SPIRO: There is no objection from plaintiff.

09:18:29 1 **THE COURT:** Received.

09:18:30 2 (Exhibit No. 563 admitted into evidence.)

09:18:30 3 BY MR. SPIRO:

09:18:31 4 Q. And if you could look, Mr. Musk, at 336?

09:18:40 5 **MR. WOOD:** No objection.

09:18:46 6 **MR. SPIRO:** We would offer 336. No objection.

09:18:50 7 **THE COURT:** Received.

09:18:51 8 (Exhibit No. 336 received in evidence.)

09:18:53 9 BY MR. SPIRO:

09:18:53 10 Q. And then, after you were done assisting in any way you
09:18:57 11 could with the rescue operation, can you take a look at --

09:19:01 12 Well, did you receive thanks from the
09:19:03 13 government of Thailand?

09:19:05 14 A. Yes.

09:19:05 15 Q. Can you take a look at 645?

09:19:13 16 A. Yes.

09:19:15 17 **MR. SPIRO:** With no objection from plaintiff, I
09:19:18 18 would offer that.

09:19:29 19 **THE COURT:** Don't put it on the screen until there
09:19:32 20 is a --

09:19:32 21 **MR. SPIRO:** I think it was offered without
09:19:33 22 objection.

09:19:34 23 **THE COURT:** All right, then, it's received.

09:19:36 24 (Exhibit No. 645 received in evidence.)

09:19:37 25 **MR. SPIRO:** And 674.

09:19:41 1 BY MR. SPIRO:

09:19:41 2 Q. If you could take a look, Mr. Musk?

09:19:44 3 A. Yes.

09:19:45 4 MR. WOOD: No objection.

09:19:46 5 THE COURT: Received.

09:19:47 6 (Exhibit No. 674 received in evidence.)

09:19:48 7 BY MR. SPIRO:

09:19:48 8 Q. If we could put that briefly up on the screen.

09:19:57 9 Now, do you --

09:20:02 10 Can you just tell us briefly who on the
09:20:04 11 ground in Thailand you were in touch with, either by name or
09:20:08 12 designation?

09:20:09 13 A. We were in touch with a lot of people, but primarily
09:20:14 14 Rick Stanton.

09:20:16 15 MR. SPIRO: And then I would ask that 15, I
09:20:18 16 believe, we agreed yesterday that was coming in, be put up on
09:20:23 17 the screen.

09:20:27 18 (Discussion off the record.)

09:20:38 19 MR. WOOD: I have one issue with that document,
09:20:40 20 Your Honor.

09:20:40 21 THE COURT: Is there an objection?

09:20:41 22 MR. WOOD: Yes, there is.

09:20:43 23 THE COURT: One moment. Let me look at it.

09:21:19 24 MR. SPIRO: Your Honor, there is -- we've reached
09:21:20 25 an agreement, if it's okay with the Court. I'm not going to

09:21:23 1 show one page on it, and then I would just the witness a
09:21:26 2 couple of questions, and we can address --

09:21:28 3 **THE COURT:** Which page are you not going to show?

09:21:31 4 **MR. SPIRO:** The first page.

09:21:32 5 **THE COURT:** Okay. It's received except the first
09:21:35 6 page.

09:21:38 7 (Exhibit No. 15 received in evidence.)

09:21:39 8 BY MR. SPIRO:

09:21:40 9 Q. If we could go to the last page, not the first page.

09:21:43 10 **MR. WOOD:** Your Honor, there is -- they're
09:21:48 11 displaying something.

09:22:12 12 (Discussion held off the record.)

09:22:12 13 BY MR. SPIRO:

09:22:13 14 Q. So, if we could go to the page before this, that's up
09:22:16 15 on the screen. Not -- not that page.

09:22:33 16 Okay. So, we're going to do this by Bates
09:22:36 17 number just so it's easier.

09:22:37 18 **THE COURT:** We're now at Exhibit 15, and the
09:22:42 19 exhibit has numbered pages at the bottom. So, which page are
09:22:46 20 you referring to?

09:22:47 21 **MR. SPIRO:** So, we're going to --

09:23:07 22 If we could --

09:23:09 23 (Discussion off the record.)

09:23:12 24 **MR. SPIRO:** I think we've solved the technical
09:23:15 25 issue that plaintiff requested.

09:23:17 1 BY MR. SPIRO:

09:23:18 2 Q. So, at the bottom of 15-7 --

09:23:33 3 Are you there, Mr. Musk? Where Richard
09:23:36 4 Stanton e-mails you on the 8th of July.

09:23:39 5 A. Yes.

09:23:40 6 Q. And can you read what Mr. Stanton wrote to you?

09:23:42 7 A. "It is absolutely worth continuing with the
09:23:44 8 development of this system in as timely manner as possible --
09:23:50 9 as feasible. If the rain holds out, it may well be used."

09:23:55 10 Q. At the time he sent that e-mail, did you understand
09:23:58 11 what his role was in the rescue?

09:24:00 12 A. I understood that he was the lead of the rescue team.

09:24:08 13 Q. If you could turn now to 15-3, again, at the bottom of
09:24:27 14 the page.

09:24:36 15 A. Yes.

09:24:36 16 Q. And can you read what you wrote to Mr. Stanton on the
09:24:42 17 7th of July?

09:24:44 18 A. I said: "Okay, building both a pressure resistant
09:24:52 19 aluminium tube and a dry rubber cocoon. Baseline requirement
09:24:58 20 is that whether the person is passed out or having a panic
09:25:03 21 attack, it will still be fine.

09:25:04 22 "Also no stray hoses that can get caught or
09:25:07 23 anything or pulled out. Basically, a straightjacket with an
09:25:11 24 air feed. Is this roughly the right direction?"

09:25:15 25 Q. And if we could go to the 15-2, again, just the bottom

09:25:20 1 of the page.

09:25:21 2 A. From "good speaking"?

09:25:24 3 Q. Yes, your e-mail on July the 7th.

09:25:27 4 A. On July 7. "Good speaking. Earlier today I asked the
09:25:31 5 SpaceX space suit team to build a kid-size dry cocoon with
09:25:38 6 air tank in the nose that slowly breathes the air. 75-minute
7 capability."

8 **COURT REPORTER:** Would you slow down, please.

9 **THE WITNESS:** Im sorry. Okay.

10 BY MR. SPIRO:

11 Q. Especially on the technical words.

09:25:41 12 A. Absolutely. "Good Speaking. Earlier today, I asked
09:25:48 13 the SpaceX space suit team to build a kid-size dry cocoon
09:25:54 14 with an air tank in the nose that slowly breathes air"
09:25:59 15 parentheses "(75-minute capability) and a vent in the rear.

09:26:03 16 "As a fallback safety, there is a reg"
09:26:06 17 meaning a regulator "in the pod that Ts off the air tank."
09:26:11 18 It's a T joint is what it means.

09:26:15 19 "Usable envelope is 5-foot by 1.5-foot with a
09:26:20 20 roughly cigar shape (as you mentioned.)"

09:26:25 21 Q. If you could turn to 15-5, July 7th e-mail from Rick
09:26:37 22 Stanton to you.

09:26:38 23 A. Yes.

09:26:39 24 Q. Can you first read your e-mail and then Mr. Stanton's
09:26:43 25 response. So, you're reading your e-mail at 10:56 -- again,

09:26:50 1 the time stamps are obviously a bunch of different time
09:26:54 2 zones, but that timestamp, 10:56. That -- and your e-mail
09:26:59 3 before that is at 16:13. So you can read your e-mail and
09:27:01 4 then Mr. Stanton's response?

09:27:02 5 A. Okay. "Would it be possible to send me video segments
09:27:08 6 or several pictures of most difficult sections? This will be
09:27:12 7 extremely helpful."

09:27:13 8 Q. And what was his reply?

09:27:15 9 A. "We don't have this. It won't mean anything without
09:27:19 10 scale. If you make a capsule which tightly encloses a
09:27:25 11 15-year-old boy and no bigger, it will fit through."

09:27:34 12 Q. And then, just so the jury understands, were there
09:27:39 13 multiple pods or mini subs or just one?

09:27:46 14 A. There was one rigid, and we also made a flexible
09:27:52 15 submersible as a fallback measure.

09:27:54 16 Q. And I want you to turn to 15-3, the July 7th e-mail
09:28:04 17 from Rick Stanton. Did Mr. Stanton indicate to you in this
09:28:13 18 e-mail which mini sub he preferred or he suggested?

09:28:19 19 A. Yes. He was unequivocal that he wanted a rigid
09:28:24 20 submersible. His e-mail is: "I'm not sure about the rubber
09:28:30 21 cocoon as it would transmit pressure onto the child. Rigid
09:28:36 22 is better. Plus O2 as a breathing gas rather than air."

09:28:49 23 I should say, it was my understanding that he
09:28:52 24 had the best understanding of a cave system since he was the
09:28:56 25 one who found the kids. That's why I'm all the way there.

(Discussion held off the record.)

MR. WOOD: I object on Rule 802. Hearsay.

THE COURT: Wait, 15-3?

MR. SPIRO: No, no, we're talking about --

THE COURT: You can't keep talking to each other,
I mean, that's not the protocol.

Offer an exhibit, get a stipulation; and if
there isn't any, I'll rule.

MR. SPIRO: We would offer at this time 548 and --
548.

MR. WOOD: Objection. Rule of evidence --

THE COURT: 54 -- and what was the other one, 549
did you say?

MR. SPIRO: It's just 548 at this time.

THE COURT: What's the objection?

MR. WOOD: I'm sorry, 548 no objection.

THE COURT: 548 is in evidence.

(Exhibit No. 548 received in evidence.)

MR. SPIRO: And then I would offer 587 and 588.

THE COURT: I don't have anything in my book for
587 and -- 588 I do have.

MR. WOOD: No objection, Your Honor.

THE COURT: One moment. They're received.

(Exhibit Nos. 587 and 588 received in evidence.)

MR. SPIRO: At this time I'm asking for the

09:31:18 1 exhibit -- the video to be played, quickly.

09:31:20 2 **THE COURT:** You can on do that.

09:32:13 3 (Videotape viewed.)

09:33:00 4 BY MR. SPIRO:

09:33:01 5 Q. Mr. Musk, was that a video of your engineers and the
09:33:05 6 team testing the pod?

09:33:14 7 A. Yes.

09:33:14 8 Q. If you could take a look at Exhibit 597.

09:33:27 9 A. Yes.

09:33:27 10 Q. Is that a tweet you sent following your visit into the
09:33:37 11 cave?

09:33:38 12 A. Yes.

09:33:38 13 Q. And that's an accurate photograph of that tweet?

09:33:43 14 A. Yes. At the time I was not -- but yes.

09:33:48 15 **MR. SPIRO:** I would offer 597.

09:33:51 16 **THE COURT:** Received.

09:33:52 17 (Exhibit No. 597 admitted into evidence.)

09:33:52 18 BY MR. SPIRO:

09:33:52 19 Q. Can you just read that for the jury.

09:33:54 20 And if you could put that up on the screen.

09:33:58 21 A. "Just returned from Cave 3. Mini sub is ready if
09:34:03 22 needed. It is made of bracket parts and named Wild Boars
09:34:08 23 after kids' score team. Leaving here in case it may be
09:34:12 24 useful" -- meaning leaving it here in case it may be useful
09:34:17 25 in the future. "Thailand is so beautiful."

09:34:23 1 Q. And then I'm going to ask you to take a look at 579.

09:34:30 2 A. Okay.

09:34:33 3 Q. Do you recognize that?

09:34:35 4 A. Yes.

09:34:36 5 Q. And what is that?

09:34:38 6 A. They're my tweet there, but it says: "Thanks, but
09:34:44 7 we've not done anything useful yet. It is all other people."

09:34:44 8 **MR. WOOD:** No objection.

09:34:48 9 **MR. SPIRO:** That's in evidence, if it's okay with
09:34:51 10 the Court?

09:34:53 11 **THE COURT:** It's in evidence.

09:34:54 12 (Exhibit Nos. 579 admitted into evidence.)

09:34:54 13 BY MR. SPIRO:

09:34:55 14 Q. I was just asking you --

09:34:56 15 A. Should I read it?

09:34:58 16 Q. Read it, please.

09:34:59 17 A. "Thanks, but we've not done anything useful yet. It
09:35:03 18 is all other people."

09:35:19 19 Q. And if you could take a look at 596?

09:35:24 20 A. Yes.

09:35:26 21 Q. And can you tell us what that is?

09:35:31 22 A. Both tweets or just the highlighted one?

09:35:36 23 Q. Both tweets.

09:35:37 24 A. Okay. "Continue to be amazed by the bravery,
09:35:42 25 resilience and tenacity of the kids and diving team in

09:35:46 1 Thailand. Human character at its best." And the next tweet
09:35:51 2 is: "Great news that they made it out safely.
09:35:56 3 Congratulations to an outstanding rescue team."

09:35:58 4 Q. And are these accurate tweets?

09:36:01 5 A. Yes.

09:36:02 6 **MR. SPIRO:** We would offer that.

09:36:04 7 **THE COURT:** Received.

09:36:04 8 (Exhibit No. 596 received into evidence.)

09:36:04 9 BY MR. SPIRO:

09:36:04 10 Q. When you left Thailand, did any of your engineers
09:36:07 11 remain behind?

09:36:08 12 A. Yes, we have probably about 20, 25 engineers remained.

09:36:13 13 Q. And now that we've taken a look at your tweets, did
09:36:17 14 you try to take credit in any way, shape or form for the
09:36:23 15 rescue operation?

09:36:24 16 A. No, not at all.

09:36:25 17 Q. Now, you were asked some questions yesterday, and I'm
09:36:30 18 going to sort of divide this into categories so you can
09:36:34 19 follow. I'm going to refer to -- when there's people looking
09:36:38 20 for the kids in the cave, the search, and when they're trying
09:36:40 21 to extract the kids by driving in and saving them, the
09:36:42 22 rescue. Just to make it simple. Do you understand?

09:36:44 23 A. Yes.

09:36:44 24 Q. Okay. How many people did you understand were
09:36:47 25 involved in the search of the children, approximately, if you

09:36:50 1 can?

09:36:50 2 A. It seemed like hundreds.

09:36:52 3 Q. And how many people did you understand were involved
09:36:55 4 in the actual dive or rescue? If you have an understanding.

09:37:02 5 A. You mean the actual divers? Or how many went in the
09:37:06 6 cave -- how many divers went in the cave?

09:37:09 7 Q. I'm talking about the divers that -- I'm talking about
09:37:12 8 the divers, the people that dove under water, saved the kids
09:37:17 9 and extracted them out.

09:37:17 10 A. Okay. I think at the beginning it was very small,
09:37:20 11 like, two to four people. I think Rick Stanton may have been
09:37:24 12 one of the guys, found the kids at the far side of the cave,
09:37:29 13 and then the dive rescue team got a lot bigger after that. I
09:37:36 14 think it may have been, like, in terms of actual divers, a
09:37:41 15 dozen or so? I'm not certain of the exact number. I think
09:37:45 16 there -- I think they're --

09:37:46 17 I'm not clear on the exact number. Maybe 10
09:37:48 18 to 20, by the end.

09:37:50 19 Q. And was it your understanding at any point later, you
09:37:54 20 already testified that when the CNN interview happens and the
09:37:57 21 tweet and response happens, you didn't know who Mr. Unsworth
09:38:03 22 was. Do you have an understanding now of which role Mr.
09:38:07 23 Unsworth was involved in?

09:38:10 24 A. It's not -- I don't have a clear understanding, but it
09:38:14 25 sounds like he helped coordinate the British divers coming to

09:38:21 1 Thailand. That's my understanding.

09:38:27 2 Q. Was he a diver?

09:38:31 3 A. No.

09:38:31 4 Q. Now, you also received some questions about whether or
09:38:36 5 not there was some criticisms of you or questions raised
09:38:40 6 about the genuineness of your efforts in Thailand. Do you
09:38:45 7 recall those questions?

09:38:46 8 A. Yes.

09:38:47 9 Q. Okay. Are you criticized frequently, Mr. Musk?

09:38:54 10 A. All the time.

09:38:55 11 Q. What was different in your mind about --

09:38:57 12 Well, can you sort of describe at that point
09:39:00 13 what you believed the criticism was or how prolific it was?

09:39:05 14 I'm saying separate from what Mr. Unsworth did on CNN.

09:39:11 15 A. I mean, there was some claims in the media that the
09:39:19 16 attempts to help were disingenuous and that maybe doing work
09:39:25 17 or something like that.

09:39:26 18 Q. What was different -- or what about Mr. Unsworth's
09:39:32 19 interview upset you?

09:39:35 20 A. Well, he denigrated the efforts of -- of my team. And
09:39:41 21 there are a lot of people who worked day and night to be
09:39:47 22 helpful, even when they knew that the probability of being
09:39:52 23 helpful was low, and that they cancelled their obligations,
09:39:58 24 you know, left their families behind, just worked day and
09:40:02 25 night to try to be helpful, and he denigrated their efforts

09:40:06 1 in a way that was completely inappropriate and wrong.

09:40:08 2 Q. Can you explain that a little bit more? In terms of
09:40:13 3 the words he used and how you responded to them?

09:40:16 4 A. Well, he said that it wouldn't work, whereas, we had
09:40:21 5 been told by Rick Stanton, the guy who had actually been on
09:40:26 6 the dive team, the lead diver, that it would work. So that
09:40:30 7 appeared to be a false statement.

09:40:31 8 He also said that we were thrown out of the
09:40:34 9 cave, the cave system, which was also a lie.

09:40:38 10 Q. And what about the manner in which he conducted at the
09:40:41 11 interview?

09:40:43 12 A. He was --

09:40:44 13 **MR. WOOD:** Objection as leading.

09:40:48 14 **THE COURT:** Overruled.

09:40:50 15 BY MR. SPIRO:

09:40:50 16 Q. You may continue, Mr. Musk.

09:40:52 17 A. He was extremely rude and contemptuous.

09:40:59 18 Q. Now, if we could put up the tweets, which is Exhibit
09:41:04 19 19. So, now, I understand that this is an exhibit in this
09:41:19 20 case, but how quickly, can you tell the jury, did you delete
09:41:23 21 these tweets?

09:41:24 22 A. Within hours of publishing them.

09:41:29 23 Q. Did you delete them as soon as you knew that the media
09:41:32 24 was covering this?

09:41:34 25 A. Yes. Well, and -- yes, yes, and -- yeah. A lot of

09:41:41 1 people said that, you know, probably you shouldn't write
09:41:44 2 that. So, I deleted it.

09:41:48 3 Q. And can you just -- just in your own words, just take
09:41:52 4 the jury through what you tweeted here?

09:41:55 5 A. Sure. I mean, rather than read it --

09:41:58 6 Q. Let me ask you this. Why don't you --

09:42:01 7 Yeah, if you could read the first sentence in
09:42:04 8 the way that you meant it.

09:42:06 9 A. Okay. Yeah, I'd say this was -- I was -- it was a
09:42:19 10 very much an off-the-cuff response. "Never saw this British
09:42:24 11 expat guy who lives in Thailand (sus) at any point when we
09:42:30 12 were in the caves."

09:42:30 13 Q. Let me stop you there.

09:42:30 14 A. Okay.

09:42:36 15 Q. The first sentence is: "Never" -- the first clause
09:42:37 16 is: "Never saw this British expat guy."

09:42:41 17 A. Yes.

09:42:41 18 Q. Do you claim in any of these tweets that you knew a
09:42:47 19 lot about the expat guy?

09:42:51 20 A. Never heard of him before. I thought he was just some
09:42:57 21 random expat guy living in Thailand.

09:43:01 22 Q. And then do you use shorthand in this?

09:43:08 23 A. Yes.

09:43:09 24 Q. What does "ob" mean?

09:43:13 25 A. "Obviously."

09:43:19 1 Q. Do you write: "I challenge this dude"?

09:43:27 2 A. Yeah. "I challenge this dude to a show a final rescue
09:43:31 3 video."

09:43:31 4 Q. Do you yet again give credit to others?

09:43:35 5 A. Yes. In fact, this was --

09:43:38 6 Really the pump and generator team deserve
09:43:44 7 immense credit here. This rescue would not have happened
09:43:48 8 without that. And nobody talks about them.

09:43:51 9 Q. What is: "No problemo" mean?

09:44:00 10 A. That's a phrase that Bart Simpson uses in the
09:44:03 11 Simpsons. I use it as a, sort of, joking phrase, "no
09:44:09 12 problemo."

09:44:09 13 Q. What is --

09:44:09 14 A. It's supposed to be cool, I suppose.

09:44:13 15 Q. What does that mean, though?

09:44:16 16 **MR. WOOD:** Objection, Your Honor.

09:44:18 17 **THE COURT:** Overruled.

09:44:18 18 **THE WITNESS:** It means "no problem." It's -- it's
09:44:20 19 a, I guess, like, it's sort of joking way of saying: Yeah --
09:44:29 20 yeah, I mean, you know, it would be easy, no problem.

09:44:33 21 BY MR. SPIRO:

09:44:36 22 Q. And what does: "You really did ask for it" mean?

09:44:43 23 A. Well, he -- "You really did ask for it" means that --
09:44:48 24 it was referring to an unprovoked attack on my team, and me
09:44:57 25 with a bunch of false statements, saying the sub wouldn't

09:45:02 1 work and that we were thrown out of the cave.

09:45:06 2 So, you know, he was rude and insulting, and
09:45:10 3 so, you know, I insulted him back. Just regrettable, but --

09:45:19 4 Q. And just so that everyone is clear, are you -- did you
09:45:23 5 sue Mr. Unsworth about any of his rude or inappropriate or
09:45:29 6 lie comments?

09:45:30 7 A. No.

09:45:36 8 Q. And then --

09:45:39 9 We have the wrong version, but just for
09:45:41 10 simplicity's sake, the: "Bet you a signed dollar it's true"
09:45:47 11 what does that mean?

09:45:47 12 **MR. WOOD:** Objection. Relevance, state of mind.

09:45:51 13 **THE COURT:** Overruled.

09:45:52 14 BY MR. SPIRO:

09:45:52 15 Q. Can you just explain to the jury what: "Bet you a
09:45:54 16 signed dollar it's true" means?

09:45:56 17 A. It just means that might be true, might not be true.
09:46:02 18 It's obviously a low-stakes wager. It's not -- certainly
09:46:06 19 not -- it -- it means, you know, it's not impossible.

09:46:10 20 Q. And you're not actually making a bet there, are you,
09:46:15 21 Mr. Musk?

09:46:16 22 A. No.

09:46:19 23 Q. And did you also delete that tweet immediately?

09:46:25 24 A. Yes.

09:46:25 25 Q. Now --

09:46:27 1 A. I mean, it's kind of like somebody says they're going
09:46:30 2 to Colorado a lot. It's possible, they have -- could have
09:46:35 3 gone for weed, you know. Maybe. Not -- not if they come
09:46:41 4 from California, though.

09:46:45 5 Q. Can you just tell the jury, just to have some sense,
09:46:47 6 about how long it took you to write those tweets?

09:46:50 7 A. Just minutes.

09:46:51 8 Q. And approximately how many tweets at the time were you
09:46:54 9 writing a month? If you have any idea? Can you estimate?

09:46:57 10 A. I don't know, maybe a hundred -- a hundred or 200.

09:47:02 11 Q. And just stepping aside from tweets for a second. Can
09:47:06 12 you just give the jury a sense of your -- just in a couple of
09:47:13 13 sentences how busy your schedule is or just what your
09:47:20 14 day-to-day is like?

09:47:21 15 A. Yeah. It's very extreme work schedule, it's usually,
09:47:25 16 like, 80 to 100 hours a week on SpaceX and Tesla primarily.
09:47:31 17 It's a very difficult work schedule. Wouldn't recommend it.
09:47:35 18 Umm, yeah.

09:47:36 19 Q. How many companies are you in charge of at this point?

09:47:42 20 A. Well, the hour -- in SpaceX and Tesla, and I'm also
09:47:48 21 the chief engineer of SpaceX, so I lead the design of the
09:47:52 22 rockets and the design of the cars. But that's like 95
09:47:57 23 percent of my time. Oren Company and Neuralink are --
09:48:03 24 they're very small companies, and I don't have, really, a
09:48:07 25 strong day-to-day role there.

09:48:08 1 Q. Now, Mr. Musk, when you were writing these tweets,
09:48:12 2 were you accusing Mr. Unsworth of the crime of pedophilia?

09:48:18 3 A. Absolutely not.

09:48:19 4 Q. Do you even use Mr. Unsworth's name in these tweets?

09:48:25 5 A. No.

09:48:25 6 Q. You were asked a bunch of questions yesterday about
09:48:29 7 when the first time you explained that this was an insult.
09:48:34 8 Was it obvious to you from the moment you said it that it was
09:48:37 9 an assault?

09:48:38 10 A. I thought it was very obviously just an insult.

09:48:41 11 Q. And did other questions were --

09:48:44 12 The first time you ever publicly said what
09:48:48 13 these tweets meant to you was not until your deposition.
09:48:52 14 Remember some questions about that?

09:48:54 15 A. Yes.

09:48:54 16 Q. Well, did you ever have a press conference about the
09:48:59 17 tweets?

09:48:59 18 A. No.

09:48:59 19 Q. Did you ever issue, you know, a statement about the
09:49:02 20 tweets, other than the apology we talked about?

09:49:05 21 A. No.

09:49:06 22 Q. Did you give interviews on CNN about the tweets?

09:49:09 23 A. No.

09:49:09 24 Q. Okay. When was the first time you were ever asked
09:49:12 25 what you meant by the tweets?

09:49:14 1 A. At the deposition.

09:49:16 2 Q. And what did you say then?

09:49:18 3 A. I said it was meant as an insult in response to his
09:49:23 4 insults.

09:49:25 5 Q. You were asked some questions about --

09:49:31 6 You don't call --

09:49:33 7 Is it correct that you don't call Mr.
09:49:36 8 Unsworth a pedophile?

09:49:39 9 A. That is correct.

09:49:40 10 Q. And what -- what is a pedophile in your mind?

09:49:42 11 A. A pedophile could be someone -- well, it could be
09:49:45 12 either someone how has a state of mind of -- of a pedophile
09:49:52 13 or the crime itself.

09:49:54 14 Q. So, focusing on --

09:49:55 15 When you say the state of mind --

09:49:57 16 A. It's possible that somebody could be a pedophile but
09:50:00 17 not act upon it; meaning, they could have an unhealthy
09:50:06 18 interest in children but not act upon it.

09:50:09 19 Q. Okay. And did you ever -- just to be very specific --
09:50:12 20 did you ever accuse Mr. Unsworth of the act or crime of
09:50:18 21 pedophilia?

09:50:19 22 A. No.

09:50:22 23 Q. You were asked a question about the Cora article that
09:50:32 24 you posted in your apology tweet.

09:50:35 25 A. Yes.

09:50:35 1 Q. Why did you post that article?

09:50:37 2 A. It was a -- mostly accurate recounting of the events
09:50:43 3 of the -- of what happened in Thailand and what the team had
09:50:48 4 done to aid in the rescue.

09:50:51 5 Q. And why were you concerned about the team?

09:50:55 6 A. Well, they'd put a lot of blood, sweat and tears into
09:51:00 7 trying to help out, and we got nothing but criticism for it.

09:51:04 8 Q. And what do you mean when you say "unreasonable
09:51:08 9 grief"?

09:51:09 10 A. Well, my -- my comments caused grief to -- to a lot of
09:51:15 11 people, that -- it -- it was definitely hurtful to my team.
09:51:25 12 And, you know, obviously hurtful to Mr. Unsworth. It was --
09:51:31 13 it was -- it was not helpful, I mean, just goes to show that,
09:51:37 14 you know, some --

09:51:38 15 It's kind of like, you know, my mom used to
09:51:41 16 say: If somebody insults you, just let -- let it go.
09:51:41 17 Don't -- you know...

09:51:48 18 **MR. SPIRO:** I'm going to show the witness or ask
09:51:49 19 that the witness look at Exhibit 25. It should be in your
09:51:57 20 binder.

09:51:57 21 BY MR. SPIRO:

09:52:03 22 Q. Right around this time in mid July, was the media
09:52:08 23 reporting that Mr. Unsworth was planning to sue you?

09:52:13 24 **MR. WOOD:** Objection.

09:52:14 25 **THE WITNESS:** I'm sorry, I don't have 25.

09:52:16 1 BY MR. SPIRO:

09:52:17 2 Q. Forget 25.

09:52:18 3 A. Okay.

09:52:18 4 **MR. WOOD:** Objection. Leading.

09:52:19 5 BY MR. SPIRO:

09:52:20 6 Q. Did you know whether or not Mr. Unsworth was planning
09:52:22 7 to sue you in the middle of July?

09:52:24 8 A. Yes. He said so on CNN, I believe, or on some radio
09:52:30 9 news channel.

09:52:31 10 Q. Were there articles that came out about Mr. Unsworth's
09:52:34 11 intent to sue you?

09:52:35 12 A. Yes.

09:52:36 13 Q. Can you look at Exhibit 25? If you don't --

09:52:42 14 A. Should I -- I'm not sure I have it. I'm at 24.

09:52:46 15 Q. I can pass up a copy. Not through the well, of
09:52:51 16 course.

09:52:51 17 A. Twenty-four?

09:52:56 18 **COURT CLERK:** Counsel, you said Exhibit 25?

09:52:59 19 **THE WITNESS:** I have 24 and 26. Umm, yeah,
09:53:18 20 unfortunately, not 25.

09:53:20 21 **COURT CLERK:** There is no 25.

09:53:28 22 **THE COURT:** Well, 25 appears to be the Guardian
09:53:31 23 article; is that right?

09:53:34 24 **MR. SPIRO:** Yes.

09:53:34 25 BY MR. SPIRO:

09:53:34 1 Q. Do you remember --

09:53:34 2 Let me come back to this.

09:53:36 3 Do you remember a specific article the
09:53:38 4 Guardian wrote, or do you not --

09:53:40 5 A. Yeah, I remember the Guardian writing some article
09:53:46 6 saying that Mr. Unsworth was going to sue me. And there
09:53:48 7 were, I think, quite a few articles, yeah.

09:53:51 8 Q. I'm going to ask, while we gather the Guardian
09:53:56 9 article, if you could take a look at Exhibit 630. If you
09:54:11 10 could look at the bigger binder.

09:54:13 11 A. Yes, I got it.

09:54:14 12 Q. Were people talking about the fact that Mr. Unsworth
09:54:19 13 was going to sue you on social media?

09:54:22 14 A. Yes.

09:54:30 15 **MR. WOOD:** We do have an objection.

09:54:31 16 **MR. SPIRO:** This is something that maybe we could
09:54:33 17 visit at the break.

09:54:33 18 BY MR. SPIRO:

09:54:35 19 Q. But is -- is it fair to say that 6 -- Exhibit 630,
09:54:39 20 without reading it, it's not in evidence -- but just to put a
09:54:42 21 pin on it, the -- is an example of an individual talking
09:54:48 22 about the fact that you're likely to be sued, and linking to
09:54:51 23 an article? Without telling us who it was.

09:54:53 24 **MR. WOOD:** Objection, Your Honor. He's trying to
09:54:56 25 get the exhibit information in.

09:54:57 1 **THE COURT:** I think --

09:54:57 2 The objection will be sustained. We can take
09:55:01 3 it up later.

09:55:03 4 BY MR. SPIRO:

09:55:03 5 Q. Now, just to keep the timeline straight, we're going
09:55:28 6 to put up the calendar.

09:55:33 7 **THE COURT:** All right, just for demonstrative
09:55:35 8 purposes.

09:55:35 9 **MR. SPIRO:** Basing on my direct. I'm not very
09:55:38 10 mobile right now.

09:55:39 11 But the jury is familiar hopefully with the
09:55:42 12 month of July.

09:55:58 13 BY MR. SPIRO:

09:55:59 14 Q. All right. So, if we can take a look and put up on
09:56:03 15 the screen 62, that is in evidence.

09:56:14 16 And I'm going to clear my -- okay.

09:56:21 17 We talked about the tweets on the 15th, Mr.
09:56:30 18 Musk?

09:56:30 19 A. Yes.

09:56:30 20 Q. And the apology, right in the middle of July, and we
09:56:35 21 spoke about some of the media attention.

09:56:37 22 When did, as you understand it, James Howard
09:56:41 23 reach out to your office? If you know?

09:56:43 24 A. Yes, he reached out shortly after the tweets.

09:56:48 25 Q. Okay. And do you know when, Mr. Musk, in August, your

09:57:06 1 office began communicating with Mr. Howard?

09:57:16 2 A. I -- I'm not sure of the exact date, but I think it
09:57:20 3 was -- it would have been perhaps mid August or thereabouts.
09:57:25 4 I'm not sure actually when --

09:57:28 5 I don't know when that day would have -- but
09:57:30 6 my understanding is mid August.

09:57:33 7 Q. And so, fair to say, on the 18th, 19th, 20th of July,
09:57:41 8 23rd of July, despite the media reports about the lawsuit,
09:57:45 9 you did not reach out to Mr. Howard. Is that accurate?

09:57:52 10 A. That's correct.

09:57:53 11 Q. Was anything that Mr. Howard told Mr. Birchall, who
09:58:01 12 repeated some of it to you, was it -- was it in your mind on
09:58:06 13 July 15th, back in time?

09:58:09 14 **MR. WOOD:** Objection, Your Honor. That goes to
09:58:11 15 the substance of what Mr. Howard said, which is not what we
09:58:14 16 put into evidence for. State of mind.

09:58:16 17 **THE COURT:** I thought the question was what
09:58:19 18 Birchall said Howard said to Birchall.

09:58:23 19 Was that the way you framed the question?

09:58:26 20 **MR. SPIRO:** Yes, Your Honor.

09:58:27 21 **THE COURT:** The objection is overruled.

09:58:28 22 BY MR. SPIRO:

09:58:29 23 Q. So, was any of the stuff, to put it another way, that
09:58:30 24 you learned later in August, was it in your mind somehow on
09:58:34 25 July 15th when you sent that tweet?

09:58:38 1 A. No.

09:58:38 2 Q. Would that even be possible?

09:58:40 3 A. No, it's impossible.

09:58:52 4 Q. Now, just so the jury understands, you were asked some

09:58:57 5 questions about Jared Birchall and what his roles were at the

09:59:01 6 various companies. Can you just explain to the jury what his

09:59:05 7 role is?

09:59:05 8 A. He manages my family office.

09:59:08 9 Q. Okay. Does he serve as the CEO or any active role in

09:59:13 10 any company?

09:59:13 11 A. No.

09:59:14 12 Q. And when you say he manages your family office, can

09:59:17 13 you just explain --

09:59:20 14 Strike that.

09:59:20 15 If you could take a look at 656 --

09:59:36 16 A. Yes.

09:59:36 17 **MR. WOOD:** I have an objection to 656.

09:59:40 18 **THE COURT:** Let me see it.

09:59:40 19 **MR. WOOD:** I'll withdraw that objection, Your

09:59:50 20 Honor.

09:59:52 21 **THE COURT:** 656 is received if you're offering it.

09:59:55 22 **MR. SPIRO:** Yes, Your Honor.

09:59:56 23 **THE COURT:** It's received.

09:59:57 24 (Exhibit No. 656 received in evidence.)

10:00:13 25 BY MR. SPIRO:

10:00:13 1 Q. Is there any doubt in your mind that when you hired or
10:00:17 2 when Mr. Birchall hired Mr. Howard, the investigator, that
10:00:20 3 you were facing likely imminent lawsuit?

10:00:25 4 A. Yes.

10:00:27 5 Q. Let me --

10:00:29 6 The question was not a good one.

10:00:33 7 Are you certain that when you hired
10:00:36 8 Mr. Howard, the investigator, that you were aware that you
10:00:40 9 were facing an imminent lawsuit?

10:00:47 10 A. Yes. It was in response to the imminent lawsuit that
10:00:51 11 he was engaged.

10:00:53 12 Q. When you say in later July -- later August: "It's
10:01:10 13 strange he hasn't sued me, and that he was offered free legal
10:01:15 14 services." Do you remember that tweet?

10:01:17 15 A. Yes.

10:01:17 16 Q. When you said that tweet, were you already receiving
10:01:21 17 information from Mr. Birchall, from Mr. Howard, back to you?

10:01:25 18 A. Sorry, what date is that?

10:01:28 19 Q. August 28?

10:01:29 20 A. Yes, I received some information from Mr. Birchall
10:01:34 21 that sounded very -- sounded like potentially that there was
10:01:39 22 some bad things going on.

10:01:43 23 Q. And in that tweet you indicate: "He was offered free
10:01:50 24 legal services." Right?

10:01:52 25 A. Yes.

10:01:52 1 Q. The fact that he was offered legal services was on
10:01:56 2 your mind.

10:01:56 3 A. Yes.

10:02:07 4 Q. Right around that same time you were shown --

10:02:11 5 **MR. SPIRO:** And I'm going to show the witness now,
10:02:21 6 69 -- 933.

10:02:29 7 **MR. WOOD:** No objection.

10:02:31 8 **THE COURT:** Received.

10:02:32 9 (Exhibit No. 933 received in evidence.)

10:02:35 10 BY MR. SPIRO:

10:02:35 11 Q. And if you could just look at the top.

10:02:38 12 When you write: "The reporter. Off the
10:02:42 13 record." What does that mean?

10:02:44 14 A. "Off the record" means not for publication.

10:02:47 15 **MR. WOOD:** Objection, Your Honor.

10:02:49 16 **THE COURT:** Overruled.

10:02:53 17 **THE WITNESS:** It just means not for publication,
10:02:57 18 in any way.

10:02:58 19 BY MR. SPIRO:

10:03:00 20 Q. And at this point, did you believe the information
10:03:04 21 that you put in this e-mail was information you received from
10:03:09 22 Mr. Howard to Mr. Birchall?

10:03:11 23 A. Yes.

10:03:11 24 Q. Is all the information you put in this e-mail
10:03:16 25 consistent with the information you believe, again, from

10:03:19 1 Mr. Howard to Mr. Birchall to you?

10:03:21 2 A. Yes.

10:03:22 3 Q. If we can go to the prior e-mails. Let's go down to
10:03:28 4 the beginning.

10:03:33 5 Okay. So, August 29th, you get the first
10:03:37 6 e-mail. Do you see that?

10:03:39 7 A. Yes.

10:03:39 8 Q. Okay. If we can go down, and you respond. And then
10:03:50 9 August 29th, again, and he writes: "Actually, he prefers to
10:03:59 10 be called a spelunker, and we've confirmed that he actually
10:04:05 11 does do cave diving."

10:04:10 12 Go up.

10:04:11 13 And any messages you --

10:04:12 14 You don't respond, right? August 29?

10:04:14 15 A. Correct. Yes.

10:04:16 16 Q. And does he follow up here again?

10:04:19 17 A. Yes.

10:04:19 18 **MR. SPIRO:** And then I'm going to show the witness
10:04:25 19 688.

10:04:27 20 **MR. WOOD:** No objection.

10:04:42 21 **THE COURT:** Received.

10:04:43 22 (Exhibit No. 688 received in evidence.)

10:04:46 23 **MR. SPIRO:** Can you put 688 up on the board? This
10:04:51 24 is not 688.

10:04:51 25 (Discussion held off the record.)

MR. SPIRO: I'm being told my underlining is not

very good. So, I'll do it one more time.

BY MR. SPIRO:

Q. One more time. Let me ask you this, Mr. Musk. When you were on -- when Mr. Lin was examining you, Lin Wood, excuse me, Mr. Wood was examining you, did he show you this e-mail?

A. I don't recall. I don't think so.

Q. On the same day did you also send this e-mail to the reporter?

A. Yes.

Q. And what does that e-mail say?

A. This is -- this is on background, which means just, not for attribution, but it's just -- these are the facts that should be cleared up. So, this -- this can be published, but it just -- I don't want them having me -- as a quote. It's just information on background. So -- as opposed to the other e-mail, which was not for publication. These facts could be used in publication.

Should I read the e-mail or --

Q. It's in evidence. I don't think we need to do that at this time.

A. Okay.

Q. Subsequent to August 30th, okay, at some point in September --

10:06:32 1 Remember, we're going to go chronologically,
10:06:34 2 right? So, now we're in September.

10:06:36 3 A. Yes.

10:06:36 4 Q. At a later point in time, did you come to have
10:06:42 5 concerns about the reliability of Mr. Howard?

10:06:44 6 A. Yes.

10:06:44 7 Q. Okay. And as you sit here today, all this information
10:06:49 8 that you had --

10:06:51 9 Again, in July 15, did you know anything
10:06:54 10 about Mr. Unsworth?

10:06:55 11 A. Nothing.

10:06:56 12 Q. Late August, did you believe you knew something about
10:07:00 13 Mr. Unsworth?

10:07:00 14 A. Yes.

10:07:01 15 Q. Now, we're in September. At that point in time in
10:07:06 16 September, did you -- in your own mind -- did you begin to
10:07:12 17 have concerns about the reliability of Mr. Howard?

10:07:14 18 A. Yes.

10:07:15 19 Q. And did eventually you instruct Mr. Birchall to
10:07:20 20 withdraw and have no further contact with him?

10:07:22 21 A. Yes.

10:07:25 22 Q. You were asked a lot of questions about --

10:07:34 23 Mr. Wood asked you a bunch of questions
10:07:36 24 about, you know: "Mr. Unsworth separated from his wife. He
10:07:39 25 met his companion Tik in a coffee shop."

Do you remember those questions?

A. Yes.

Q. Okay. As you sit here today, you don't know. Right?

A. I don't know for -- I don't know if those are -- if that's actually true or not.

Q. Right. You still, as you sit here today, you don't know -- you don't have any information about the personal background of Mr. Unsworth?

A. I mean, I've heard people say some things, but I do not know if those things are true or not.

MR. SPIRO: Just a moment, Your Honor.

(Discussion off the record.)

BY MR. SPIRO:

Q. And just -- finally, the apologies you've made to Mr. Unsworth, you apologized right after the tweets?

A. Yes.

Q. You apologized at his deposition?

A. Yes.

Q. You apologized yesterday in court?

A. Yes.

Q. Are those genuine apologies?

A. Yes.

MR. SPIRO: I have nothing further.

THE COURT: Recross.

MR. SPIRO: With those issues, of course, we can

10:08:58 1 address --

10:08:59 2 **THE COURT:** Yes.

10:09:01 3 **MR. WOOD:** May I proceed, Your Honor?

10:09:03 4 **THE COURT:** Yes.

10:09:08 5 RECROSS-EXAMINATION

10:09:08 6 BY MR. WOOD:

10:09:09 7 Q. Mr. Musk, if would you turn to 201.

10:09:12 8 If you could put it on the screen for me.

10:09:15 9 A. Sorry. Do you mean -- of the large --

10:09:20 10 Q. In the notebook of exhibits.

10:09:23 11 I'm sorry, he needs to have a trial exhibit
10:09:26 12 notebook.

10:09:29 13 **THE COURT:** Is 201 in evidence?

10:09:31 14 **MR. WOOD:** It is, but I wanted him to look at it.

10:09:33 15 **COURT CLERK:** It came in yesterday.

10:09:35 16 **THE COURT:** I see. He can look at it on the
10:09:37 17 screen.

10:09:37 18 **THE WITNESS:** Yeah, sure.

10:09:38 19 BY MR. WOOD:

10:09:39 20 Q. I want to make sure to pull it up on the screen.

10:09:41 21 A. Sure.

10:09:53 22 Q. When you just testified that your apologies were
10:09:57 23 genuine, you were talking about, including the apology that
10:10:03 24 you put on Twitter on or about July 17th or 18th, true?

10:10:12 25 A. That was the first of the three apologies, yes.

10:10:19 1 Q. You wanted Mr. Unsworth to know that you were sorry,
10:10:24 2 true?

10:10:25 3 A. Yes.

10:10:25 4 Q. How was he going to know that?

10:10:27 5 A. Well, where I said I apologized to Mr. Unsworth and to
10:10:31 6 the company representatives later.

10:10:32 7 Q. Mr. Musk, do you have any evidence or knowledge to
10:10:38 8 suggest that Vern Unsworth was ever on Twitter?

10:10:47 9 A. I don't, but anything that I say on Twitter, most
10:10:50 10 things that I say on Twitter will generally get some press
10:10:54 11 awareness.

10:10:56 12 Q. So, if you wanted --

10:11:01 13 Mr. Unsworth, in what he stated in his
10:11:04 14 interview about your tube, did not state it on Twitter, did
10:11:10 15 he?

10:11:10 16 A. No, he's -- he stated it on a CNN interview.

10:11:16 17 Q. So, there is obviously a disconnect, potentially,
10:11:22 18 between whether Mr. Unsworth would even see the apology,
10:11:27 19 given that he does not have a Twitter account, and he did not
10:11:32 20 have it in July of 2018?

10:11:35 21 A. I think that's unlikely as there are -- as was shown,
10:11:44 22 my original insult that was reported, and the apology was
10:11:49 23 also reported. So, I mean, if I -- if I write something on
10:11:54 24 Twitter, it will get reported, generally.

10:11:56 25 Q. So, you expected with both the "pedo guy" tweet on

10:12:05 1 Twitter, you knew at the time you made it then, and you
10:12:08 2 expected at the time you made the apology that your tweets
10:12:13 3 were going to get widespread publicity. True?

10:12:16 4 A. They're going to get some publicity, yeah.

10:12:21 5 Q. Well, more publicity than they would get in terms of
10:12:25 6 just the Twitter world, true?

10:12:27 7 A. Yes.

10:12:28 8 Q. You expected they would get publicity beyond the
10:12:32 9 people on Twitter, true?

10:12:36 10 A. Yes.

10:12:36 11 Q. Both with respect to the apology -- you made that
10:12:44 12 assumption, right?

10:12:44 13 A. Yes.

10:12:45 14 Q. That Mr. Unsworth would find out about it on media
10:12:49 15 reports outside of Twitter, right?

10:12:51 16 A. Yeah, since the original -- my insult response to Mr.
10:12:56 17 Unsworth's insults and lies were -- was on Twitter, it seemed
10:13:04 18 appropriate that the apology should also be on Twitter. It's
10:13:06 19 the same -- if that would make sense. I think it would be
10:13:10 20 odd if the insults was on Twitter, and then the apology was
10:13:15 21 in a completely different medium.

10:13:18 22 Q. "Mr. Unsworth, what you said was an insult about the
10:13:21 23 tube on CNN." That was not published by Mr. Unsworth on
10:13:26 24 Twitter by Mr. Unsworth.

10:13:28 25 A. Not by Mr. Unsworth, no, but by others.

10:13:31 1 Q. Right. If there was a Twitter brawl involving you and
10:13:35 2 some other individual on Twitter over your "pedo guy"
10:13:43 3 comments, it would not have been a brawl on Twitter that Mr.
10:13:47 4 Unsworth ever engaged in. He was not on Twitter. Right?

10:13:50 5 **MR. SPIRO:** Objection. Form. Assumes facts. He
10:13:54 6 said he doesn't know whether he's on Twitter.

10:13:56 7 **MR. WOOD:** There will be testimony he was not,
10:13:58 8 Your Honor.

10:13:59 9 **THE COURT:** Well, let that come in if it's going
10:14:02 10 to be presented. But I'll sustain the objection.

10:14:04 11 **MR. WOOD:** May I have just a moment, Your Honor?

10:14:16 12 **THE COURT:** Yes.

10:14:56 13 BY MR. WOOD:

10:14:56 14 Q. You went over with Mr. Spiro some of the e-mails and a
10:15:01 15 video related to the development of the mini submarine,
10:15:08 16 right?

10:15:09 17 A. Yes.

10:15:11 18 **MR. WOOD:** I'm going to ask the witness to look at
10:15:19 19 Exhibit 252, 262, 269, 270, 271 and 263.

10:15:55 20 That's why I'm asking him to look so he can
10:15:58 21 object if he wants to.

10:16:11 22 (Discussion off the record.)

10:16:26 23 **MR. SPIRO:** Your Honor, I understand that's a long
10:16:28 24 series of different tweets. If it's the words of Mr. Musk in
10:16:32 25 and around that time, that, we have no objection to that.

10:16:35 1 **THE COURT:** Well, all I can do is respond to an
10:16:42 2 objection or a stipulation.

10:16:44 3 Are you agreeing that these documents as
10:16:49 4 cited by counsel can be in evidence?

10:16:51 5 **MR. SPIRO:** As for the statements of Mr. Musk,
10:16:53 6 yes.

10:16:53 7 **THE COURT:** All right, then, received for that
10:16:55 8 purpose.

10:15:21 9 (Exhibit Nos. 252, 262, 269, 270, 271 and 263
10:17:03 10 admitted into evidence.)

10:17:03 11 **THE WITNESS:** So -- a lot of numbers. Are we on
10:17:05 12 the screen or which --

10:17:09 13 BY MR. WOOD:

10:17:11 14 Q. We'll go through them one at a time and let you look
10:17:14 15 at them.

10:17:14 16 A. Yes.

10:17:15 17 Q. Do you remember tweeting 252?

10:17:20 18 A. Yes.

10:17:20 19 Q. And then, if you would, continue with that grid. Do
10:17:34 20 you remember tweeting that second page in front of you?

10:17:38 21 A. Yeah.

10:17:38 22 Q. And then the next page. Do you remember tweeting
10:17:45 23 these tweets on July the 10th, July the 8th, July the 11th?

10:17:54 24 A. Not sure -- I mean, yeah --

10:17:57 25 I don't remember every tweet. There are

10:17:58 1 thousands of tweets. But if you show them, then, sure, like
10:18:02 2 it helps to recall them.

10:18:03 3 Q. And then the next page, of 252, those are your tweets
10:18:10 4 on July the 8th? One or more being maybe July the 10th and
10:18:15 5 July the 11th. Those are the tweets that you posted, true?

10:18:20 6 A. Yeah.

10:18:20 7 Q. Same thing with the next page, tweets of July the 11th
10:18:24 8 and 10th?

10:18:27 9 A. Yeah.

10:18:28 10 Q. Same thing with the next page, tweets of July 11, July
10:18:33 11 10, you tweeted those on those dates?

10:18:39 12 A. Yes.

10:18:40 13 Q. Same thing with respect to the tweets on the last page
10:18:44 14 of 252, July 8, 10, and 11, those are your tweets made on
10:18:50 15 those dates?

10:18:52 16 A. Yes.

10:18:52 17 Q. And in all of those, you're essentially tweeting about
10:18:56 18 the development of the tube, right?

10:18:58 19 A. Not all of them.

10:19:00 20 Q. A number of them were about the development of the
10:19:05 21 tube. True?

10:19:07 22 A. You seem to be listing just the -- all the tweets that
10:19:11 23 I've made of those times. Some of it was related to the
10:19:14 24 tube, some of it was not.

10:19:16 25 Q. And then if you'd look at 262, first page, those

10:19:24 1 tweets related to your development of the tube on July the
10:19:27 2 7th, and --

10:19:30 3 A. Yeah.

10:19:31 4 Q. Yeah, that's July the 7th. And the next page more
10:19:37 5 tweets related to the development of the tube on July the 7th
10:19:40 6 that you posted. True?

10:19:44 7 A. Yes.

10:19:44 8 Q. And the next page, tweets that you posted on July the
10:19:50 9 7th, again, related to your efforts to develop -- build,
10:19:54 10 create, develop the tube, true?

10:19:57 11 A. Yes.

10:19:58 12 Q. And the next page, again July 7th, tweets related to
10:20:03 13 your being involved in building the tube, true?

10:20:06 14 A. Yes. I was looking for feedback from the public to
10:20:09 15 see if there's any improvements they could suggest.

10:20:14 16 Q. Thank you. Right now I'm just asking you, did you
10:20:16 17 make these tweets?

10:20:17 18 A. Yes.

10:20:18 19 Q. Did you make the tweets on the next page --

10:20:18 20 A. Yes.

10:20:20 21 Q. -- on July the 7th. Those are your tweets about the
10:20:26 22 tube?

10:20:26 23 A. Yes.

10:20:31 24 Q. And the next page?

10:20:35 25 A. I mean, I tweet a lot. In general.

10:20:39 1 Q. I'm just talking about the amount of tweets you did
10:20:42 2 regarding your development of the tube from July the 7th to
10:20:46 3 July the 11th. That's what I'm asking you about.

10:20:49 4 And then look at 269. Again, that's a tweet
10:21:01 5 that you posted on July the 8th about the tube?

10:21:05 6 A. Yes.

10:21:06 7 Q. 270. And I apologize, Mr. Musk, there is a picture
10:21:17 8 there. Did you post a video, the one that you showed in
10:21:20 9 court, or is that just a photograph from the video?

10:21:23 10 A. I believe that's the video that was shown.

10:21:25 11 Q. So, you -- the video that was shown in court today
10:21:29 12 about the efforts to go from one end of the swimming pool to
10:21:33 13 the other with a person in it, that your counsel played in
10:21:38 14 court today.

10:21:39 15 A. Yes.

10:21:39 16 Q. You posted that video in its entirety on your Twitter
10:21:43 17 page on July the 8th; am I right?

10:21:46 18 A. Yes. As I mentioned, I was looking for feedback from
10:21:52 19 the public as to how we might improve the design.

10:21:57 20 Q. So, you were hoping to get this -- significant input
10:22:01 21 from the public to help you build this tube in time to save
10:22:05 22 the boys? Is that what you're telling me?

10:22:07 23 A. Yeah. I frequently solicit feedback from the public
10:22:12 24 on many things, the Tesla car design, even some of the rocket
10:22:17 25 stuff.

10:22:18 1 There are some pretty smart people out there,
10:22:21 2 and they have some good feedback. In fact, I would say,
10:22:32 3 like, we've incorporated quite a lot of public feedback from
10:22:38 4 Twitter into Tesla vehicle design.

10:22:49 5 Q. So, would you agree with me that appearing from
10:22:53 6 Twitter that between the 7th and 9th, 10th of July, you were
10:23:04 7 tweeting extensively about your efforts regarding the tube --
10:23:09 8 I understand that you tell us it was to get input from the
10:23:11 9 public. I understand that.

10:23:12 10 A. Yes.

10:23:12 11 Q. But you were tweeting extensively to get out to the
10:23:18 12 public all of your efforts in SpaceX efforts to build the
10:23:22 13 tube. True?

10:23:25 14 A. Yes, I was trying to get feedback from the public as
10:23:28 15 to how we might improve the design.

10:23:31 16 Q. And you were tweeting extensively for that purpose,
10:23:34 17 right?

10:23:35 18 A. Yes. As I said, I do this in general for many things
10:23:43 19 that we're working on, work on SpaceX and Tesla. It's great
10:23:48 20 to get feedback from the public.

10:23:50 21 Q. And you gave in response to Mr. Spiro your
10:23:54 22 understanding of what "pedophilia" is or what it refers to,
10:23:58 23 on direct, right?

10:24:01 24 A. Upon me --

10:24:02 25 Q. He asked you about your understanding of what

10:24:05 1 "pedophilia" was.

10:24:07 2 A. Yes.

10:24:07 3 Q. And if you'll remind me, please, and the jury, what
10:24:10 4 did you say it was?

10:24:11 5 A. It could be either a state of mind --

10:24:17 6 It could be either a crime or a state of
10:24:19 7 mind. Those -- yeah.

10:24:21 8 Q. So, you're saying that either -- as you understood,
10:24:24 9 "pedophilia" -- "pedophile," that carries with it, in your
10:24:31 10 view, potential acts the person may commit. Right?

10:24:38 11 A. It's what -- it's one of the possibilities.

10:24:41 12 Q. I'm sorry.

10:24:42 13 A. Yeah, either -- it just literally means "love of
10:24:47 14 children."

10:24:47 15 Q. Right. But your testimony is, it can either be
10:24:50 16 demonstrated through actions or thoughts. True?

10:24:54 17 A. Yes.

10:24:55 18 Q. Would sexual relations with a child who's a minor be
10:25:04 19 the act of a pedophile as you define it or understand it?

10:25:09 20 A. Yes.

10:25:09 21 Q. That would make that person, as a pedophile, in
10:25:18 22 effect, be a child rapist. Right?

10:25:20 23 A. Effectively, they would be committing statutory rape,
10:25:27 24 yes.

10:25:27 25 Q. And if under your understanding of "pedophile," if an

10:25:36 1 individual married a minor child, that would be an act of
10:25:40 2 pedophilia, true?

10:25:43 3 A. Well, strictly speaking, they would have to have
10:25:47 4 sexual relations with -- with someone who's a minor. I
10:25:55 5 think -- yeah. If somebody marries a 12-year-old, I think
10:26:00 6 that's -- that's probably pedophilia, yes.

10:26:04 7 Q. And if someone, under your understanding of
10:26:07 8 "pedophilia," if someone lives in an area known for child sex
10:26:19 9 trafficking, that's not an act of pedophilia, true?

10:26:28 10 A. True.

10:26:28 11 Q. That might suggest, though, that if someone lives in
10:26:31 12 an area of child -- near child sex trafficking, that that
10:26:36 13 person has the thoughts that you described of a pedophile,
10:26:41 14 true?

10:26:41 15 **MR. SPIRO:** Objection to the form. I don't
10:26:43 16 understand the question.

10:26:46 17 **THE COURT:** Overruled.

10:26:46 18 **THE WITNESS:** It's possible.

10:27:12 19 BY MR. WOOD:

10:27:12 20 Q. Am I correct, in your discussion of "pedophilia," that
10:27:17 21 "pedo guy" and "pedo," you see is basically the same
10:27:22 22 equivalency as an insult.

10:27:23 23 **MR. SPIRO:** Objection. Mischaracterizes the
10:27:25 24 testimony.

10:27:26 25 **THE COURT:** Well, he's asking a question. He can

10:27:28 1 ask the question. We can get an answer.

10:27:33 2 **THE WITNESS:** I think "pedo guy" is more flippant
10:27:39 3 and off-the-cuff and is less significant than "pedo."

10:27:45 4 BY MR. WOOD:

10:27:45 5 Q. In what way?

10:27:46 6 A. I mean, if you add "guy" to something, it's just --
10:27:51 7 it's less serious.

10:27:52 8 Q. Serious about what issue?

10:27:54 9 A. I mean, it -- it's just -- it's -- you know, it's a --
10:28:01 10 it is not -- it is more obviously just an insult, as if you
10:28:06 11 said, like, that, you know, "mother effer," you know, that's
10:28:13 12 like, you don't literally mean incest.

10:28:16 13 Q. Do you feel --

10:28:20 14 A. Like "that -- that mother effer guy," "MF guy," that
10:28:26 15 is obviously obviously more flippant, you know? It's not --
10:28:33 16 it's not -- it's just not as serious accusation.

10:28:36 17 I mean, I want to be clear. I did not accuse
10:28:40 18 Mr. Unsworth of being a pedophile.

10:28:43 19 Q. Mr. Musk, are you saying that "pedo guy" is a more
10:28:51 20 flippant way of expressing "pedo"?

10:28:54 21 A. It's just obviously an insult. No one -- no one took
10:28:59 22 that to mean "pedophile."

10:29:03 23 **MR. WOOD:** Move to strike that, Your Honor.

10:29:05 24 **THE COURT:** All right. It's stricken.

10:29:08 25 **MR. WOOD:** Thank you. And the jury be asked to

10:29:10 1 disregard it.

10:29:11 2 **THE COURT:** The jury will follow my instructions.

10:29:22 3 **MR. WOOD:** Thank you.

10:29:22 4 BY MR. WOOD:

10:29:22 5 Q. So, "pedo" and "pedo guy" are not essentially
10:29:27 6 equivalent, of the same thing, one more flippant, one more
10:29:27 7 serious.

10:29:27 8 A. They're both flippant. One is more flippant than the
10:29:31 9 other.

10:29:31 10 Q. So, if somebody says: *Hey, you're a pedo.* That would
10:29:37 11 be saying less flippantly than saying: *Hey, you're a pedo*
10:29:37 12 *guy.*

10:29:42 13 Is that what you're telling me?

10:29:43 14 **MR. SPIRO:** Objection. Form and also calls for
10:29:45 15 speculation.

10:29:47 16 **THE COURT:** He's probing. I mean, this is -- I
10:29:49 17 told the jury questions are not evidence, but this is
10:29:54 18 cross-examination, and the questioner is allowed to use that
10:29:59 19 form of question. That's the way cross-examination goes.
10:30:03 20 So, overruled.

10:30:09 21 BY MR. WOOD:

10:30:09 22 Q. Can you answer the question?

10:30:10 23 A. I'm not clear on what your question was. But "pedo"
10:30:16 24 and "pedo guy" both, in my view, are insults, just meaning
10:30:24 25 "creepy old man." "Pedo guy" is more flippant than "pedo."

10:30:29 1 **MR. WOOD:** If I may step away, Your Honor, for a

10:30:33 2 moment from the podium to look at the realtime feed?

10:30:37 3 **THE COURT:** Yes.

10:30:37 4 BY MR. WOOD:

10:30:49 5 Q. I just want to be clear, Mr. Musk, this is the

10:30:51 6 question that I was asking: "So, if somebody says: 'Hey,

10:30:55 7 you're a pedo,' that would be saying less flippantly than if

10:31:00 8 they had said: 'Hey, you're a pedo guy.' Is that what

10:31:05 9 you're telling us?"

10:31:06 10 A. I think both "pedo" and "pedo guy" are flippant.

10:31:12 11 "Pedo guy" is more flippant than "pedo." I think especially

10:31:16 12 in the context of which I used it in the tweet.

10:31:19 13 Q. Because that's the key to how -- the context you used

10:31:22 14 it in the tweet, true? In your mind.

10:31:25 15 A. In the tweet it was obviously a flippant insult in

10:31:29 16 response to his insult, and no one interpreted that as

10:31:34 17 being -- meaning pedophile.

10:31:41 18 Q. And is your testimony that "pedo guy" is quite

10:31:48 19 commonly known in the English speaking world as being an

10:31:56 20 insult of "creepy old man in looks and appearance." Is that

10:32:01 21 your testimony?

10:32:02 22 A. That's my belief, yes.

10:32:26 23 Q. Would you look at Exhibit 92?

10:32:42 24 **MR. SPIRO:** Your Honor, we have objections to this
10:32:44 25 exhibit.

10:32:44 1 **THE COURT:** Let me get it and look at it.

10:32:46 2 **MR. SPIRO:** Of course.

10:35:06 3 **THE COURT:** Let me ask a question. In this
10:35:10 4 exhibit, 92, and this is for the witness, if the witness has
10:35:19 5 looked at it, are these exhibits, tweets, whatever they are,
10:35:30 6 something that the witness saw at the times and dates posted
10:35:38 7 on the -- on tweets? Maybe --

10:35:49 8 **MR. WOOD:** These are actually media articles, Your
10:35:53 9 Honor.

10:35:53 10 **THE COURT:** Whatever they are. The question is:
10:35:58 11 Were these things that the witness read or --

10:36:11 12 **THE WITNESS:** No.

10:36:14 13 **THE COURT:** And so the answer is no. That was a
10:36:17 14 foundational question.

10:36:20 15 On that basis, I'll sustain the objection.
10:36:22 16 But you can ask further questions along those lines.

10:36:26 17 **MR. WOOD:** Thank you, Your Honor.

10:36:27 18 BY MR. WOOD:

10:36:28 19 Q. Mr. Musk, based on your testimony about the
10:36:33 20 understanding in the English speaking world about "pedo guy"
10:36:39 21 meaning "creepy old man in looks and appearance."

10:36:44 22 A. Uh-huh, yes.

10:36:45 23 Q. Are you familiar -- or do you know how the media in
10:36:49 24 the United Kingdom reported on that tweet, "pedo guy"?

10:36:56 25 A. Best of my recollection, the reporting was universally

1 that I had insulted Mr. Unsworth, but not that he was
2 actually a pedophile, and nobody thought that.

3 Q. The reporting was almost universal that the insults
4 you made --

5 **THE COURT:** Well, let's get a foundation here.

6 **MR. WOOD:** I'll restate it.

7 **THE COURT:** In other words, we're talking about --
8 this is all relating to the timeframe, and I'm not the jury,
9 so, I'm just getting a point of reference here.

10 It seems to me we're talking about the
11 timeframe between July 15 and July 17, correct?

12 **MR. WOOD:** Yes, Your Honor.

13 **THE COURT:** So, if we're talking about that
14 timeframe, the foundational question has to be not what he
15 knows now but what he knew then. And so the jury could
16 determine whether that's relevant or not.

17 I'm just trying to get to a point of
18 reference. So, the question is -- the way your question
19 should be framed is with that timeline in mind.

20 **MR. WOOD:** Thank you, Your Honor.

21 **THE COURT:** At least that's my view.

22 BY MR. WOOD:

23 Q. In the timeframe between July the 15th and July the
24 17th, did you know that the media in the United Kingdom was
25 reporting that your insult of "pedo guy" was an insult that

1 Mr. Unsworth was a pedophile?

2 **MR. SPIRO:** Objection to form. Assumes facts.

3 **THE COURT:** Well, did he know at the time? It's
4 asking for his state of mind. At the time. So, as far as
5 the question goes, I'll allow the question.

6 **THE WITNESS:** No. The --

7 Yeah, so, the -- all the press that I read,
8 including the British press, interpreted what I said as an
9 insult and not that Mr. Unsworth was actually a pedophile.
10 This was interpreted --

11 And the press was universally negative
12 against me and in support of Mr. Unsworth.

13 BY MR. WOOD:

14 Q. So, you're now telling us that you did know what the
15 press was reporting --

16 **THE COURT:** When you say "now" --

17 Don't use the word "now," because it's
18 argumentative. Just ask him a question.

19 BY MR. WOOD:

20 Q. Between July the 15th and July the 17th, did you know
21 what the press in the United Kingdom was saying about "pedo
22 guy"?

23 A. My recollection of all the press at the time was that
24 the -- they correctly interpreted what I said as being an
25 insult, not an actual accusation of pedophilia.

10:40:10 1 Q. Same question with respect to the press at the time,
10:40:13 2 July the 15th, July 17th in Finland, Sweden and Denmark.

10:40:23 3 A. Well, I -- I admittedly -- I do not read Scandinavian
10:40:29 4 press. I don't speak Finnish, Swedish or Norwegian.

10:40:35 5 Q. How about -- the same question between the July 15 and
10:40:39 6 July the 17th in terms of what was being reported in the
10:40:44 7 Netherlands and Belgium.

10:40:47 8 A. I -- I don't know what was reported in Netherlands and
10:40:52 9 Belgium. I do not speak Dutch or Flemish.

10:40:58 10 Q. Same question with respect to July the 15th or July
10:41:00 11 the 17, about what the media was reporting about "pedo guy"
10:41:03 12 in Switzerland and Austria.

10:41:07 13 A. I mean -- no.

10:41:09 14 **THE COURT:** Let's not go through the globe. I
10:41:09 15 mean --

10:41:17 16 What languages do you speak, Mr. Musk?

10:41:20 17 **THE WITNESS:** Well, I speak a little Spanish and a
10:41:23 18 little French and a little German.

10:41:26 19 **THE COURT:** I'll allow you to go through the
10:41:29 20 Caribbean and South America, and maybe the German part of
10:41:35 21 Switzerland and Germany.

10:41:39 22 **MR. WOOD:** Let me try this, if I might, Your
10:41:41 23 Honor. Now, given the witness' testimony, I re-tender into
10:41:45 24 evidence Exhibit 92. I think I've laid the foundation.

10:41:46 25 **THE COURT:** The objection is sustained.

10:42:07 1 BY MR. WOOD:

10:42:07 2 Q. Would you look at Exhibit 212, Mr. Musk?

10:43:06 3 **MR. WOOD:** Your Honor, I tender in evidence
10:43:08 4 Exhibit 212 with an exclusion from that exhibit of any Google
10:43:24 5 Alerts that are not related to the July 15 tweets. And with
10:43:28 6 those exclusions, I tender into evidence, on behalf of the
10:43:32 7 plaintiff.

10:43:32 8 **THE COURT:** All right, let's --

10:43:34 9 **MR. SPIRO:** There is an objection.

10:43:38 10 **THE COURT:** What did you say?

10:43:38 11 **MR. SPIRO:** There will be an objection.

10:43:40 12 **THE COURT:** Let's take the morning recess for 10
10:43:45 13 or 12 minutes, okay?

10:43:48 14 **COURT CLERK:** All rise.

10:44:08 15 (Following proceedings held outside the presence
10:44:33 16 of the jury.)

10:44:34 17 **THE COURT:** What is the relevance of Exhibit 212?

10:44:38 18 **MR. WOOD:** It is a Google Alerts sent directly to
10:44:44 19 Elon Musk, alerting him that there were media report on July
10:44:49 20 the 16th, stating that he called Mr. Unsworth a pedophile.

10:45:05 21 **THE COURT:** I see. It's part of the presentation
10:45:08 22 from the plaintiff that the apology was the result of
10:45:13 23 pressure and not genuine.

10:45:15 24 **MR. WOOD:** That, and the interpretation in the
10:45:18 25 English speaking world was that "pedo guy" meant "pedophile"

10:45:25 1 not "creepy old man in manner and appearance."

10:45:31 2 **THE COURT:** Well, I don't see the -- the relevance
10:45:36 3 of the tweet for that purpose. He's just saying "pedo,"
10:45:43 4 and --

10:45:43 5 What's your objection? If that -- just that
10:45:47 6 first paragraph on Exhibit 212 is offered, and everything
10:45:53 7 thereafter is not.

10:45:54 8 **MR. SPIRO:** The problem is one of relevance, that
10:45:58 9 you have discussed with Mr. Wood; but it's also foundational,
10:46:03 10 and -- it's very misleading under 403.

10:46:08 11 **THE COURT:** Well, I mean, the foundational
10:46:10 12 objection has to be examined. I mean, he has to ask him:
10:46:14 13 Did he see this -- did he -- tell him to look at Exhibit 212,
10:46:19 14 look at the first tweet, and then ask him whether he saw that
10:46:26 15 tweet before July 17th, the apology. And if he says he did,
10:46:33 16 then, to me, it would be admissible. If he does -- if he
10:46:45 17 says he doesn't, then it wouldn't be, and the rest of it is
10:46:49 18 not admissible.

10:46:50 19 **MR. SPIRO:** I have two responses to that. The
10:46:52 20 first is, the reason Mr. Wood --

10:46:54 21 The Court gave a different reason than
10:46:56 22 Mr. Wood's reason. The Court's reason was: Well, if he saw
10:46:59 23 it, and that his apology wasn't genuine. Mr. Wood's stated
10:47:01 24 reason, I think he sort of half adopted that, but his stated
10:47:04 25 reason was to show what the people in the English language

10:47:07 1 said. Right? It just --

10:47:10 2 **THE COURT:** Yeah, but I mean all --

10:47:12 3 **MR. SPIRO:** But as, Your Honor -- sorry.

10:47:15 4 **THE COURT:** But I mean, all the tweet says, unless
10:47:18 5 I'm misreading it is, it doesn't use the word "pedophile."
10:47:26 6 Just keeps saying "pedo."

10:47:26 7 **MR. WOOD:** Do you have Exhibit 212 --

10:47:26 8 **MR. SPIRO:** Well --

10:47:29 9 **THE COURT:** Wait a second. I'm looking at 212,
10:47:31 10 I'm looking at Bates stamp 854. What else should I be
10:47:35 11 looking at?

10:47:37 12 **MR. WOOD:** You're looking at the correct part of
10:47:39 13 the document. That is a Google --

10:47:42 14 **THE COURT:** I missed the -- the headline. Yeah.
10:47:48 15 And -- and --

10:47:57 16 So, restate your objection.

10:47:58 17 **MR. SPIRO:** Sure. So, now that the Court is
10:48:01 18 focused on --

10:48:02 19 **THE COURT:** And it is the -- it is the opinion of
10:48:04 20 someone from --

10:48:09 21 You know, I don't know all these -- I hate to
10:48:18 22 admit my lack of -- of being current, but what is V-O-X?

10:48:31 23 **MR. WOOD:** Vox is a news media online around the
10:48:36 24 country and the world.

10:48:36 25 **THE COURT:** So, somebody at Vox wrote this thing,

10:48:40 1 somebody we don't know about.

10:48:40 2 **MR. SPIRO:** Right.

10:48:46 3 **THE COURT:** And they put the headline up there.

10:48:48 4 Now, the body of it doesn't contain any further description
10:48:51 5 of "pedophile." It's just -- the body just has "pedo." And
10:48:57 6 some unknown person has concluded and headlined that "pedo"
10:49:04 7 means "pedophile."

10:49:06 8 So, is there an objection?

10:49:07 9 **MR. SPIRO:** Of course, yes, Your Honor.

10:49:09 10 **THE COURT:** Sustained. Okay. We're in recess.

10:50:07 11 (Recess taken.)

11:11:41 12 (Following proceedings were held in the presence
11:11:51 13 of the jury.)

11:11:51 14 **THE COURT:** You may proceed.

11:11:53 15 **MR. WOOD:** Thank you, Your Honor.

11:11:54 16 BY MR. WOOD:

11:11:55 17 Q. Mr. Musk, would you look at Exhibit 232 in the trial
11:12:01 18 notebook?

11:12:17 19 A. Yes.

11:12:18 20 Q. Is that your tweet of July the 11th, 2018?

11:12:26 21 A. Yes.

11:12:28 22 **MR. WOOD:** I move to tender Exhibit 232 into
11:12:31 23 evidence, Your Honor.

11:12:39 24 **THE COURT:** Received.

11:12:41 25 (Exhibit No. 232 received in evidence.)

11:12:41 1 BY MR. WOOD:

11:12:42 2 Q. On July the 11th, Mr. Musk, in your tweet, you were
11:12:49 3 reacting to the criticisms of YouTube. True?

11:12:53 4 A. Yes.

11:12:54 5 Q. And you said: "This reaction has shaken my opinion of
11:13:02 6 many people."

11:13:05 7 A. Yes.

11:13:06 8 Q. If you would look at Exhibit 90.

11:13:06 9 A. Ninety.

11:13:53 10 Q. Exhibit 90.

11:13:53 11 **MR. SPIRO:** There is an objection to this exhibit.

11:13:53 12 **THE COURT:** No objection.

11:13:53 13 **MR. SPIRO:** There is an objection.

11:13:57 14 **THE COURT:** So, lay a foundation. I mean, along
11:14:01 15 the lines that we discussed.

11:14:02 16 **MR. SPIRO:** It would be an additional objection,
11:14:04 17 and 403 and other objections we would have.

11:14:06 18 **THE COURT:** Just let me look at it.

11:14:06 19 BY MR. WOOD:

11:14:08 20 Q. Mr. Musk --

11:14:11 21 **THE COURT:** One moment.

11:14:12 22 **MR. SPIRO:** Hearsay, in addition.

11:14:16 23 BY MR. WOOD:

11:14:17 24 Q. Mr. Musk --

11:14:19 25 **THE COURT:** One second.

11:14:20 1 **MR. WOOD:** Oh, I'm sorry.

11:14:52 2 **THE COURT:** Can the parties answer my question

11:14:54 3 without controversy? Can you do that?

11:14:59 4 Who is Sam Teller?

11:15:03 5 **MR. WOOD:** The de facto chief of staff, as he

11:15:06 6 testified to, for like, four or five years, for Mr. Musk.

11:15:10 7 **THE COURT:** Approach the sidebar.

11:15:27 8 (Sidebar conference.)

11:15:40 9 **THE COURT:** My impression is, as a starting point,

11:15:47 10 that it goes to the genuineness of the apology.

11:15:51 11 **MR. SPIRO:** That's what the Court has said a

11:15:53 12 couple of times. I would just say this, one is, it's

11:15:56 13 obviously ranked, it's obviously ranked like textbook

11:16:00 14 hearsay. It's from a subject line that says: "From, ah,

11:16:04 15 another person, and then it's in quotes in the person.

11:16:08 16 **THE COURT:** It's not being offered for the truth

11:16:09 17 of --

11:16:12 18 It's being offered for what his state of mind

11:16:13 19 is.

11:16:15 20 **MR. SPIRO:** Right. But then it has all of this

11:16:18 21 prejudicial, misleading, confusing and unbelievably

11:16:23 22 prejudicial information.

11:16:25 23 **THE COURT:** Just one moment.

11:16:26 24 **MR. SPIRO:** Yeah.

11:16:44 25 I have one further comment.

11:16:59 1 **THE COURT:** Yeah.

11:17:00 2 **MR. SPIRO:** I mean, I can come up with

11:17:02 3 many quotes, like: "To dump Tesla." "Losing major backers."

11:17:07 4 "\$10 million worth of stock." "How much suffering went to

11:17:08 5 this person?" "A really big bet for me." "Suffering to that

11:17:11 6 person."

11:17:12 7 Talking about yet again third parties. He's

11:17:14 8 already testified --

11:17:15 9 **THE COURT:** I got that.

11:17:20 10 **MR. SPIRO:** May I just say one last thing?

11:17:20 11 **THE COURT:** Yes.

11:17:23 12 **MR. SPIRO:** He's already testified that he was

11:17:24 13 under pressure to change the apology because he was upset.

11:17:27 14 It has very little probative value to what he's already

11:17:32 15 said --

11:17:33 16 **THE COURT:** How about some questions from you

11:17:43 17 about whether after July 15, he was --

11:18:02 18 Whether he was getting some feedback from

11:18:07 19 persons in his company, that the -- the publicity about the

11:18:12 20 tweet was causing some harm to the business. You asked that

11:18:20 21 question --

11:18:20 22 **MR. WOOD:** No, not --

11:18:21 23 **MR. SPIRO:** I understand it's close to -- he

11:18:24 24 doesn't understand the rules of evidence. He's going to just

11:18:26 25 start reading.

11:18:28 1 **MR. WOOD:** I'm not --

11:18:28 2 **MR. SPIRO:** He's going to --

11:18:31 3 He still has it in front of him. He's going
11:18:33 4 to move it.

11:18:35 5 **MR. WOOD:** Ask him to move it.

11:18:38 6 (In open court.)

11:18:40 7 **THE COURT:** Close the book.

11:18:52 8 **MR. WOOD:** May I proceed?

11:18:53 9 **THE COURT:** Yes.

11:18:54 10 **MR. WOOD:** Thank you.

11:18:55 11 BY MR. WOOD:

11:18:56 12 Q. Mr. Musk, between the time of the publication in
11:19:03 13 Twitter of the statement "pedo guy," before your publication
11:19:08 14 on Twitter of the apology --

11:19:12 15 You know what timeframe we're talking about
11:19:14 16 now?

11:19:15 17 A. Yeah, a few days.

11:19:17 18 Q. During that time period, sir, did anyone connected
11:19:23 19 with your company ever inform you that the "pedo guy" tweet
11:19:32 20 was creating issues in terms of its impact on Tesla stock?

11:19:40 21 **MR. SPIRO:** Objection, to "impact on stock." The
11:19:42 22 rest of it --

11:19:44 23 **THE COURT:** He can ask the question that way. He
11:19:46 24 can answer "yes" or "no."

11:19:50 25 **THE WITNESS:** I did receive some concerned notes

11:19:53 1 from shareholders. But it's a publically traded company. So
11:19:57 2 the stock prices, I would say, no, at any given point in
11:20:00 3 time.

11:20:05 4 BY MR. WOOD:

11:20:05 5 Q. Just a couple more, Mr. Musk.

11:20:13 6 Do you acknowledge that even if you delete a
11:20:14 7 tweet, that the tweet remains available for others to tweet
11:20:19 8 or publish if they have taken a screen shot of your tweet?

11:20:26 9 A. Yes.

11:20:29 10 Q. You testified that you had never been asked before
11:20:35 11 your deposition about pedophilia. Is that your testimony?
11:20:46 12 In connection --

11:20:48 13 A. I'm not sure, if I -- I'm not sure --

11:20:51 14 Are you asking if I've been asked about
11:20:54 15 pedophilia in general or --

11:20:55 16 Can you --

11:20:56 17 Q. About the "pedo guy" tweet. Had you been asked about
11:21:00 18 pedophilia, related to the tweet about Mr. Unsworth, by
11:21:06 19 anyone before your deposition in August of 28, 2019?

11:21:13 20 **MR. SPIRO:** Objection. By anyone? By counsel?
11:21:16 21 It's too vague.

11:21:17 22 **MR. WOOD:** I'm sorry. I'll rephrase it.

11:21:17 23 BY MR. WOOD:

11:21:23 24 Q. Had you ever been asked by any member of the media or
11:21:28 25 on Twitter in relationship to your statement of "pedo guy"

11:21:35 1 about whether you were referring to pedophilia, before your
11:21:43 2 deposition?

11:21:44 3 A. It's possible that that occurred on Twitter,
11:21:46 4 somewhere.

11:21:55 5 Q. You testified that you attended Stanford to start your
11:22:14 6 graduates studies. True?

11:22:16 7 A. I started there for two days.

11:22:18 8 Q. Two days. Thank you.

11:22:19 9 My last question --

11:22:20 10 I did not ask you this earlier in your
11:22:23 11 examination. At the present time, today, would you give the
11:22:32 12 jury your best estimate as to your net worth?

11:22:42 13 **MR. SPIRO:** Objection. Outside the scope.

11:22:45 14 **THE COURT:** Well --

11:22:45 15 **MR. SPIRO:** I didn't ask him questions about that.

11:22:47 16 **THE COURT:** It is outside the scope, but I'll
11:22:50 17 allow him to reopen for that brief purpose.

11:22:53 18 I mean, we all know what the answer is going
11:22:58 19 to be, right?

11:22:58 20 **MR. SPIRO:** I do, Judge.

11:22:59 21 **THE COURT:** I mean, you know, so, let's have it so
11:23:03 22 everybody can write a headline tomorrow, okay? They're all
11:23:09 23 anxious, you know. We all know the answer, don't we?

11:23:12 24 **MR. SPIRO:** We do, so I'll sit down.

11:23:16 25 **THE COURT:** All right.

11:23:16 1 So, tell him what the answer is.

11:23:17 2 **THE WITNESS:** I own stock in SpaceX and Tesla. I

11:23:22 3 have debt against that stock. I don't have --

11:23:27 4 So many people think that I have a lot of
11:23:30 5 cash. I actually don't. I have Tesla stock, SpaceX stock
11:23:35 6 and then debt against that stock. And that value fluctuates
11:23:39 7 on a daily basis.

11:23:40 8 BY MR. WOOD:

11:23:41 9 Q. Between what range at present?

11:23:42 10 A. I actually don't know.

11:23:43 11 Q. Do you -- do you believe that it's at least at or
11:23:49 12 possibly above, from your testimony in the deposition, of a
11:23:52 13 net worth of around \$20 billion?

11:24:00 14 A. I think with my SpaceX stock and Tesla stock combined,
11:24:03 15 it would probably amount to something like that.

11:24:06 16 **MR. WOOD:** Those are all the questions I have of
11:24:06 17 Mr. Musk on behalf of the plaintiff.

11:24:06 18 Thank you, Your Honor.

11:24:08 19 **THE COURT:** Any redirect?

11:24:09 20 **MR. SPIRO:** No, Your Honor.

11:24:11 21 **THE COURT:** Thank you, Mr. Musk.

11:24:15 22 **THE DEFENDANT:** Thank you.

11:24:19 23 **THE COURT:** All right, who's the next witness?

11:24:27 24 **MR. WILSON:** Your Honor, the plaintiff would call
11:24:29 25 Mr. David Arnold by video deposition.

11:24:33 1 **MR. SPIRO:** We have to approach on this just
11:24:35 2 because of some logistics and depo designations and
11:24:38 3 objection.

11:24:39 4 **MR. LIFRAK:** There is one objection to the
11:24:40 5 exhibit, Your Honor.

11:24:46 6 **THE COURT:** Is there someone else that we can call
11:24:48 7 before the lunch who is not subject of discussions, just to
11:24:51 8 keep things going?

11:24:54 9 I mean, let's try and use up 35 minutes, and
11:24:57 10 then we'll save the lunch hour for discussion.

11:25:01 11 **MR. WOOD:** I can do that, Your Honor, with
11:25:03 12 Mr. Birchall.

11:25:04 13 **THE COURT:** Okay, let's get to Mr. Birchall.

11:25:08 14 **MR. WOOD:** So, at this time, Your Honor, we'd call
11:25:12 15 Jared Birchall.

11:26:03 16 **COURT CLERK:** Please raise your right hand.

11:26:06 17 Do you swear or affirm that the testimony
11:26:06 18 you're about to give in the case now before this Court will
11:26:06 19 be the truth, the whole truth and nothing but the truth, so
11:26:15 20 help you God?

11:26:15 21 **THE WITNESS:** Yes.

11:26:16 22 **COURT CLERK:** Please be seated.

11:26:22 23 Can you state your full name, and also spell
11:26:24 24 your full name for the record.

11:26:27 25 **THE WITNESS:** Full name is Jared John Birchall.

11:26:30 1 J-A-R-E-D, J-O-H-N, B-I-R-C-H-A-L-L.

11:26:38 2 WITNESS, JARED J. BIRCHALL, SWORN

11:26:38 3 DIRECT EXAMINATION

11:26:38 4 BY MR. WOOD:

11:26:39 5 Q. Mr. Birchall, we met at your deposition.

11:26:41 6 A. Yes.

11:26:42 7 Q. Nice to see you again.

11:26:45 8 Could you give the jury the benefit of just a
11:26:47 9 summary of your background -- I don't want to go from high
11:26:53 10 school or college, but just in terms of your business
11:26:55 11 background and how you worked with Mr. Musk or any of his
11:27:01 12 companies.

11:27:01 13 A. Sure. So, upon graduation from college, I was hired
11:27:06 14 into the field of finance, and 17, 18 years into that career
11:27:13 15 was referred to Mr. Musk when he was looking to form a family
11:27:18 16 office. A common acquaintance had referred me to him that
11:27:25 17 led to interviews, and approximately four years ago I was
11:27:29 18 hired to manage his family office.

11:27:30 19 Q. And you have served in that capacity the last four
11:27:36 20 years up until today?

11:27:37 21 A. Correct.

11:27:38 22 Q. You still serve in that capacity.

11:27:40 23 And what -- your -- your background before
11:27:43 24 that was in basically investment community?

11:27:46 25 A. Correct. Wealth management primarily.

11:27:51 1 Q. For who?

11:27:52 2 A. Well, I was working at Morgan Stanley.

11:27:56 3 Q. And you are, and at all times in July and August and
11:28:06 4 September of 2018, you were working under the control of Mr.
11:28:14 5 Musk as his agent and employee, true?

11:28:17 6 A. True.

11:28:18 7 **MR. LIFRAK:** Objection. Calls for a legal
11:28:20 8 conclusion.

11:28:25 9 **THE COURT:** I don't understand the objection.
11:28:27 10 What was the objection?

11:28:28 11 **MR. LIFRAK:** Calls for a legal conclusion, he
11:28:31 12 asked --

11:28:33 13 **THE COURT:** If he's an employee --

11:28:34 14 **MR. LIFRAK:** He was the agent.

11:28:36 15 **THE COURT:** Oh, agent. I missed that. I don't
11:28:40 16 know, "agent" is a term of art and a legal conclusion. He
11:28:45 17 is --

11:28:45 18 You are an employee, correct?

11:28:48 19 **THE WITNESS:** I am an employee.

11:28:50 20 **THE COURT:** All right, leave the agency alone for
11:28:53 21 a while.

11:28:54 22 **MR. WOOD:** Do I need to restate the question, Your
11:28:57 23 Honor?

11:28:57 24 **THE COURT:** He's an employee of Mr. Musk.

11:28:58 25 BY MR. WOOD:

11:28:58 1 Q. And during that time period as an employee of Mr.
11:29:01 2 Musk, you recognize that Mr. Musk would tell you what to do
11:29:06 3 or not to do because you were to follow the orders of the
11:29:09 4 boss, Mr. Musk. True?

11:29:11 5 A. I mean, there's certainly times when he would
11:29:16 6 specifically direct me to do things, though, he expected me
11:29:22 7 to act on my own during much of time as well.

11:29:26 8 Q. Yes. But during that entire time while you may act on
11:29:30 9 things alone, if Mr. Musk gave you an instruction on what to
11:29:34 10 do or not to do, as his employee, you understood that you
11:29:38 11 were to follow the orders of Mr. Musk, true?

11:29:40 12 A. True.

11:29:46 13 Q. Could you look, if you would --

11:29:48 14 You're new to the courtroom. There is a
11:29:51 15 binder of exhibits. I'd like you to look at Exhibit 36.

11:30:16 16 A. Exhibit 36.

11:30:17 17 Q. Exhibit 36.

11:30:39 18 A. I see Exhibit 36 -- is that --

11:30:39 19 **MR. SPIRO:** There are other binders.

11:30:40 20 **THE WITNESS:** Oh. Am I in the right binder here?

11:30:44 21 Oh, this is Elon Musk Cross-Examination. I think, another
11:30:57 22 place --

11:30:59 23 **COURT CLERK:** Exhibit 36 is placed before the
11:31:01 24 witness.

11:31:01 25 **THE WITNESS:** I'm looking at it.

11:31:01 1 BY MR. WOOD:

11:31:10 2 Q. Is that a true and correct copy of a nondisclosure
11:31:13 3 agreement between James Howard or Jupiter Investigations and
11:31:24 4 Excession LLC, that you executed on behalf of Excession LLC?

11:31:35 5 A. Yes, it is.

11:31:49 6 **MR. WOOD:** Would you pull that up?

11:31:49 7 (Exhibit published.)

11:31:50 8 **THE COURT:** It's not in evidence yet.

11:31:51 9 **MR. WOOD:** Oh, I'm sorry. Ask to admit Exhibit 36
11:31:55 10 into evidence, Your Honor.

11:31:55 11 **MR. LIFRAK:** No objection.

11:31:56 12 **THE COURT:** Received.

11:31:57 13 (Exhibit No. 36 received in evidence.)

11:32:00 14 BY MR. WOOD:

11:32:00 15 Q. At the top of that exhibit is an e-mail, right?

11:32:03 16 A. Yes.

11:32:04 17 Q. Where you are sending back to Mr. Howard a signed copy
11:32:12 18 of the agreement, the nondisclosure agreement. Correct?

11:32:17 19 A. Correct.

11:32:17 20 Q. And you sent the e-mail from JaredBirchall@gmail.com
11:32:30 21 on behalf of James Brickhouse, true?

11:32:36 22 A. I see that.

11:32:36 23 Q. It's there?

11:32:37 24 A. It is.

11:32:38 25 Q. You didn't sign the nondisclosure agreement under the

11:32:41 1 name of James Brickhouse, did you?

11:32:45 2 A. No.

11:32:45 3 Q. Because you recognize it needed the official signature
11:32:49 4 of the office manager to be enforceable, true?

11:32:52 5 A. Sure, yeah, yes.

11:33:13 6 Q. And looking down to the e-mail that you were
11:33:15 7 responding to when you sent the e-mail to Mr. Howard, he had
11:33:23 8 sent you an e-mail in which he stated: "The UK end it --
11:33:23 9 (Discussion held off the record.)

11:33:23 10 BY MR. WOOD:

11:33:46 11 Q. "The UK end it quite straightforward. But if there
11:33:50 12 are any skeletons in the cupboard, they are more likely to be
11:33:56 13 in Thailand which is where I will center the investigation."

11:34:00 14 He wrote you that in his e-mail, didn't he?

11:34:03 15 A. Yes.

11:34:20 16 Q. If you look at the first paragraph of the
11:34:23 17 nondisclosure agreement, under the portion "confidentiality,"
11:34:31 18 without going through all of the different individuals, would
11:34:35 19 you agree that the purpose of the nondisclosure agreement was
11:34:40 20 to prevent Mr. Howard from conveying to any third party any
11:34:46 21 information about Mr. Musk, his family, his friends, his
11:34:52 22 business associates, or his, in effect, companies?

11:34:57 23 A. Yes.

11:34:58 24 Q. Had you -- had you ever --

11:35:11 25 I didn't ask this. You hired Mr. Howard for

11:35:15 1 Excession on August the 15th, 2018. True?

11:35:19 2 A. Yeah, I think it was formalized on the 16th, but yes.

11:35:24 3 Q. But the agreement was struck on the 15th, formalized
11:35:30 4 on the 16, right?

11:35:32 5 A. Yes.

11:35:32 6 Q. And you were asked by Mr. Musk to be in charge of the
11:35:35 7 Howard -- I'll call it the Howard investigation, true?

11:35:38 8 A. True.

11:35:38 9 Q. Prior to that date, in any of your work experience,
11:35:42 10 had you ever been in charge of an investigation such as the
11:35:50 11 one that you were asked to be in charge of over James Howard?

11:35:54 12 A. No.

11:35:54 13 Q. Never happened before.

11:35:56 14 A. Never.

11:35:58 15 Q. Am I right that other than your return of the MDA,
11:36:05 16 executed by you, Jared Birchall, that every communication
11:36:13 17 thereafter between you and Mr. Howard was undertaken solely
11:36:19 18 under the name of Jim Brickhouse?

11:36:24 19 A. Thereafter, the intention was, yes, though there was
11:36:27 20 one e-mail that was not.

11:36:29 21 Q. Which one was that?

11:36:31 22 A. There was an e-mail that I mistakenly sent from my
11:36:38 23 personal name.

11:36:39 24 Q. And you recognized after you realized you've done
11:36:41 25 it -- it was a mistake, you intended to send it under the

11:36:44 1 name of Jim Brickhouse, right?

11:36:48 2 A. I did.

11:36:48 3 Q. And I believe you tell us --

11:36:51 4 You came up with the name Jim Brickhouse.

11:36:55 5 A. I did.

11:36:56 6 Q. Not Mr. Musk.

11:36:58 7 A. True.

11:36:58 8 Q. Was he aware that you were using an pseudonym or I
11:37:02 9 guess a fake name to deal with Howard?

11:37:05 10 A. No.

11:37:05 11 Q. You did it to, in your own judgment, as head of the
11:37:09 12 investigation of -- conducted by Howard, you wanted to
11:37:13 13 distance Mr. Howard's investigation from Elon Musk, true?

11:37:22 14 A. True. That was part of the reason.

11:37:25 15 Q. What other part was there other than that?

11:37:26 16 A. Well, the center of everything I do is focused on
11:37:29 17 confidentiality and privacy, and this was -- I'd used this
11:37:35 18 alias for other matters involving his personal travel with
11:37:39 19 his boys, involving the purchase of the web domain names,
11:37:43 20 among other things, helping a Libyan refugee, and I figured
11:37:47 21 that this was among those things that I should take extra
11:37:51 22 discretion with.

11:37:54 23 Q. To protect the interest of Mr. Musk and his family and
11:37:59 24 his corporations, true?

11:38:01 25 A. True.

11:38:04 1 Q. So, you'd use "Jim Brickhouse," in other similar
11:38:08 2 matters. How did you come up with the name Jim Brickhouse?

11:38:12 3 A. I don't recall.

11:38:13 4 Q. But what you do recall is that with respect to
11:38:17 5 Mr. Howard, despite the one mistake you indicated and e-mail
11:38:20 6 sent from your personal account, that you wanted James Howard
11:38:24 7 to, in his state of mind, I guess, you wanted to have him
11:38:29 8 believe that he was dealing with two different people, Jared
11:38:36 9 Birchall that signed the agreement and somebody named Jim
11:38:40 10 Brickhouse who was conducting the communications on the
11:38:43 11 investigation on behalf of Mr. Musk, right?

11:38:46 12 A. Correct. My initial call to him was as Jared
11:38:51 13 Birchall. The agreement was signed as Jared Birchall, and
11:38:54 14 thereafter the correspondence was meant to be in the name of
11:38:58 15 James Brickhouse.

11:38:59 16 Q. So, Mr. Howard would believe that there was a second
11:39:03 17 individual involved named James Brickhouse.

11:39:07 18 A. Yes.

11:39:07 19 Q. Even though the truth is, it was you and
11:39:09 20 Mr. Brickhouse one and the same person, true?

11:39:13 21 A. True.

11:39:14 22 Q. At the time you formerly retained Mr. Howard on behalf
11:39:20 23 of Mr. Musk, the family corporation, what did you know about
11:39:27 24 his prior investigative experience?

11:39:33 25 A. Well, the request to reach out to Mr. Howard was given

11:39:39 1 to me from a trusted colleague, Mr. Sam Teller. He came to
11:39:48 2 me with the name and number, asked me to reach out to him,
11:39:51 3 indicating that Mr. Howard had reached out with information.

11:39:54 4 I then did call Mr. Howard, and he shared
11:39:57 5 that he had prior experience working with British Special
11:40:02 6 Forces, that he had worked for other high net worth
11:40:06 7 individuals, that he had worked on other high level events
11:40:09 8 throughout the world, and seemed to be a valid investigator.

11:40:47 9 Q. I might ask you to look at Exhibit 62 either on the
11:40:52 10 screen or in the notebook, Mr. Birchall.

11:41:11 11 When you just -- when you just referred to
11:41:14 12 the information about looking into Mr. Howard that you
11:41:19 13 received from Sam Teller, right?

11:41:21 14 A. Correct.

11:41:22 15 Q. Okay, you got this e-mail from Mr. Teller inquiring
11:41:27 16 about James Howard that contains Mr. Howard's initial or one
11:41:33 17 of his initial attempts to reach out to Mr. Musk, did you --

11:41:38 18 A. No.

11:41:39 19 **MR. LIFRAK:** Objection. No foundation.

11:41:41 20 **THE COURT:** Let me have the question again, I'm
11:41:43 21 sorry, I missed that. What was the question?

11:41:55 22 BY MR. WOOD:

11:41:55 23 Q. Did Mr. Teller or anyone at SpaceX or Tesla or Mr.
11:42:01 24 Musk, office, provide you with the e-mail from Mr. Howard of
11:42:05 25 July 17th, that he had sent to -- I'm going to mess this up

11:42:15 1 -- Reyna Ortiz?

11:42:18 2 A. No.

11:42:41 3 **MR. WOOD:** May I step away for just a moment, Your
11:42:44 4 Honor?

11:42:44 5 **THE COURT:** Yes.

11:42:45 6 (Discussion off the record.)

11:42:48 7 **MR. WOOD:** Your Honor, if you would indulge me
11:42:50 8 moment, Mr. Wilson is going to find a number for me.

11:42:50 9 **THE COURT:** All right.

11:43:48 10 **MR. WOOD:** And I'll try to move along if you'll
11:43:50 11 get that number for me.

11:43:53 12 I'll move on and come back to get that
11:43:57 13 number.

11:43:59 14 BY MR. WOOD:

11:44:00 15 Q. Mr. Birchall, you will tell us that Mr. Musk was
11:44:06 16 informed of your hiring of James Howard, true?

11:44:11 17 A. Yes, I believe so. I don't recall the moment, but
11:44:14 18 yes, I would have at some point. But I didn't know that.

11:44:25 19 Q. I'm going to try to go off memory for a minute.

11:44:29 20 A. Okay.

11:44:29 21 Q. Mr. Howard had sent an e-mail offering his services to
11:44:34 22 an Elon Musk e-mail address, and he stated that he had been
11:44:41 23 involved in the past with UK Special Forces, right?

11:44:46 24 A. He did.

11:44:47 25 Q. He said in his e-mail that he had in the past worked

11:44:52 1 for Paul Allen who was obviously one of the founders or
11:44:58 2 principal owners of Microsoft?

11:45:03 3 A. Yes.

11:45:03 4 Q. He said that he had been involved in the past working
11:45:08 5 for George Soros, right?

11:45:13 6 A. Correct.

11:45:14 7 Q. And you essentially looked at that information from
11:45:17 8 Mr. Howard and you accepted it as, essentially, true, and
11:45:23 9 qualified him to conduct the investigation, true?

11:45:26 10 A. That information was -- most of the information
11:45:33 11 regarding those matters were provided to me in phone
11:45:36 12 conversations with Mr. Howard; and after Sam Teller, trusted
11:45:40 13 colleague, brought me his name and number, Mr. Howard
11:45:44 14 provided a credible background, I did trust that he was a
11:45:47 15 qualified investigator, yes.

11:45:48 16 Q. And just one other question on that subject. You
11:45:51 17 accepted it, but you will tell us that you did not try to
11:45:55 18 reach out to the Paul Allen family or to the Soros family or
11:46:01 19 to anybody in the UK to find out if it was in fact true; am I
11:46:06 20 right?

11:46:06 21 A. I did not reach out to those individuals.

11:46:08 22 Q. May I have the exhibit number?

11:46:15 23 Would you look at Exhibit 66, please, sir?

11:46:19 24 **MR. WOOD:** If it is not, we'll put it in evidence.

11:46:19 25 BY MR. WOOD:

11:46:38 1 Q. Do you have Exhibit 66 in front of you?

11:46:42 2 A. Yes, I do.

11:47:05 3 Q. Is Exhibit 66 a true and correct copy of an e-mail
11:47:09 4 exchange between you under the name of James Brickhouse and
11:47:16 5 Mr. Howard?

11:47:18 6 A. Yes, I believe so.

11:47:21 7 **MR. WOOD:** I tender Exhibit 66 into evidence on
11:47:24 8 behalf of the plaintiffs, Your Honor.

11:47:27 9 **MR. LIFRAK:** No objection.

11:47:28 10 **THE COURT:** Received.

11:47:30 11 (Exhibit No. 66 received in evidence.)

11:47:45 12 BY MR. WOOD:

11:47:45 13 Q. On August the 28th of 2018, in your e-mail to Mr.
11:47:55 14 Howard, you stated: "We would like to immediately move
11:48:02 15 forward with 'leaking' this information to the UK press.
11:48:09 16 Obviously must be done very carefully."

11:48:13 17 Have I read that correctly?

11:48:14 18 A. You have.

11:48:15 19 Q. And because Mr. Howard knew that he working on behalf
11:48:18 20 of Mr. Musk, the use of "we," you were referring to yourself,
11:48:22 21 Mr. Brickhouse, and Elon Musk. True?

11:48:26 22 A. Yes, it was a collected "we."

11:48:33 23 Q. And then if you look beyond that, you suggested in
11:48:37 24 your e-mail what, in fact, you all, felt should be the
11:48:43 25 information leaked to the UK press about Mr. Unsworth. True?

11:48:52 1 A. Not to be leaked to the press but to be provided to
11:48:55 2 the press to encourage investigative journalism.

11:49:03 3 Q. And what you were asking to look at in your line of
11:49:06 4 thinking is contained in the next five bullet points.

11:49:11 5 A. Yes.

11:49:11 6 Q. The idea being that Thailand was the world capital of
11:49:15 7 pedophilia, right?

11:49:17 8 A. Yes.

11:49:17 9 Q. And Mr. Unsworth supposedly had frequented Thailand
11:49:22 10 since the 1980s.

11:49:25 11 A. Yes.

11:49:26 12 Q. Leading to the divorce to his wife in the United
11:49:32 13 Kingdom, right?

11:49:33 14 A. Yes.

11:49:35 15 Q. That under the guise of cave exploration, albeit,
11:49:42 16 creative, because of the amazing extensive caving systems in
11:49:48 17 Thailand, around the world, not just in Thailand, you said:
11:49:52 18 "Even the most ardent supporter of Thai food doesn't eat Thai
11:49:57 19 food every day." Right?

11:49:59 20 A. Correct.

11:49:59 21 Q. And then you said: "He eventually" -- and it doesn't
11:50:07 22 say -- "eventually woman 30 years his minor, whom he met
11:50:12 23 while she was a teenager." Right?

11:50:16 24 A. Yes.

11:50:16 25 Q. And then you had the last bullet point: "He had been

11:50:20 1 going to Thailand for decades before marrying her. She
11:50:24 2 wasn't the first girl he met, and definitely not the first
11:50:28 3 teenager he interacted with." Right?

11:50:35 4 A. Yes.

11:50:36 5 Q. And then you said to him: "Share the facts. And as
11:50:41 6 you said, that should be enough for a story." Right?

11:50:49 7 A. Yes.

11:50:49 8 Q. At that time, on August the 28th, you knew that --
11:50:55 9 your words, not mine -- absolutely none of the information
11:51:01 10 that Mr. Howard had provided to you had been verified or
11:51:05 11 confirmed as accurate and true. Isn't that right?

11:51:10 12 A. Incorrect.

11:51:11 13 Q. Tell me how what's incorrect?

11:51:13 14 A. I believed him to be a credible investigator, and he
11:51:20 15 had provided a lot of information. These were some
11:51:20 16 high-level bullet points based on my understanding of the
11:51:25 17 information he had provided.

11:51:28 18 I clearly said: Share these facts. I
11:51:30 19 understood these things to be facts and encouraged in my
11:51:32 20 request to him was to share facts, which he then did,
11:51:36 21 slightly modified some of these bullet points and did share
11:51:40 22 under the directive of sharing facts. So, I indeed believed
11:51:44 23 that this was correct information.

11:51:46 24 Q. "Correct information," meaning correct, that he had
11:51:49 25 provided you in some form that information, but you did not

11:51:59 1 know whether it was correct and accurate in the sense of
11:52:03 2 whether it was actually true and correct as to Vernon
11:52:08 3 Unsworth. True?

11:52:09 4 A. I believed that it was true and correct. He was a
11:52:11 5 professional investigator. This was his wheelhouse, and I
11:52:17 6 was relying upon him to do his job.

11:52:45 7 **MR. WOOD:** May I have one second, Your Honor, to
11:52:45 8 get an exhibit number.

11:52:47 9 I'm getting those exhibit numbers, Judge.
11:52:48 10 Thank you for bearing with me. If I get those, I'll be able
11:52:52 11 to conclude, I believe, the examination of Mr. Birchall after
11:52:57 12 I get these two exhibits into evidence.

11:52:58 13 BY MR. WOOD:

11:53:15 14 Q. Would you take a look, please, at -- in the trial
11:53:18 15 notebook, not on the screen -- Exhibit 72?

11:53:48 16 A. I have it.

11:53:49 17 Q. Is 72 a true and correct copy of an e-mail exchange
11:54:04 18 between you and Mr. Howard?

11:54:12 19 A. Yes, I believe so.

11:54:15 20 **MR. WOOD:** I tender Exhibit 72 into evidence on
11:54:18 21 behalf of the plaintiff.

11:54:19 22 **THE COURT:** Received.

11:54:20 23 (Exhibit No. 72 received in evidence.)

11:54:37 24 BY MR. WOOD:

11:54:38 25 Q. And if you would now look, Mr. Birchall, at Exhibit

11:54:48 1 67.

11:55:06 2 Have you had a chance to look at Exhibit 67?

11:55:09 3 A. Yes, I have it here in front of me.

11:55:20 4 Q. Exhibit 67, does that represent true and correct
11:55:25 5 copies of text exchanges that you had with Mr. Howard between
11:55:30 6 August the 24th and October the 2nd of 2018?

11:55:36 7 **MR. LIFRAK:** Objection, Your Honor. Some of these
11:55:39 8 text messages go past the end of August and would violate the
11:55:46 9 Court's rulings.

11:55:47 10 **THE COURT:** Well, then, if that's the only
11:55:49 11 objection, I'll sustain the objection up to that date.

11:55:54 12 **MR. LIFRAK:** No, it's not -- it's the content of
11:55:56 13 them --

11:55:57 14 **THE COURT:** I understand --

11:55:59 15 **MR. LIFRAK:** Could we approach. It's on an issue
11:56:00 16 that we discussed before?

11:56:00 17 **THE COURT:** All right, you can approach.
11:56:27 18 (Sidebar conference.)

11:56:27 19 **MR. WOOD:** Judge, I'll withdraw that portion of
11:56:29 20 it. It goes past September the 1st.

11:56:34 21 **THE COURT:** There seems to be a more basic
11:56:36 22 objection.

11:56:38 23 **MR. SPIRO:** There's tons of information in
11:56:40 24 there --

11:56:41 25 **THE COURT:** Here is what I'm missing. It seems to

11:56:44 1 me that Birchall was of the state of mind of what he did
11:56:56 2 isn't relevant. I mean, unless it was communicated to Musk,
11:57:02 3 and so that was some of the central positioning of the
11:57:10 4 defense.

11:57:10 5 **MR. SPIRO:** Hundred percent.

11:57:11 6 **THE COURT:** I didn't hear an objection until now.

11:57:14 7 **MR. SPIRO:** Well, again, we're trying to walk the
11:57:17 8 line between --

11:57:18 9 **THE COURT:** I know, but -- but that's my view.

11:57:21 10 And unless there is -- unless there is -- the questions that
11:57:27 11 might be relevant, okay, are not what Birchall communicated
11:57:31 12 to Howard but what Birchall may or may not have said to Musk.

11:57:37 13 **MR. SPIRO:** So, then we don't think --

11:57:39 14 **THE COURT:** I sustained the objection.

11:58:49 15 (In open court.)

11:58:49 16 BY MR. WOOD:

11:59:16 17 Q. Would you look at 72 that is in evidence.

11:59:18 18 Can you pull that up, please?

11:59:40 19 Mr. Birchall, on August the 25th of 2018, you
11:59:52 20 informed Mr. Howard in your role as the head of the
11:59:58 21 investigation for Mr. Musk that upon a successful
12:00:05 22 confirmation of a nefarious behavior by Mr. Unsworth that he
12:00:13 23 would receive an additional \$10,000 bonus, true?

12:00:19 24 A. True.

12:00:19 25 Q. And when you communicated that to Mr. Howard on August

12:00:24 1 the 25th, you finished by saying: "Timing is important, as
12:00:31 2 you know. Preferably in the next 36 to 48 hours." Right?

12:00:42 3 A. Yes.

12:00:49 4 Q. On October the 2nd, you informed Mr. Howard -- October
12:00:58 5 the 2nd, 2018, you informed Mr. Howard to go back and review
12:01:03 6 the information he had provided, aside from the initial
12:01:08 7 input, and you told him: "You've just about given us
12:01:13 8 nothing, and you have given exactly nothing verified." True?

12:01:19 9 A. True. I wrote that.

12:01:21 10 **MR. WOOD:** That completes the examination of Mr.
12:01:25 11 Birchall on behalf of Vernon Unsworth, Your Honor.

12:01:29 12 **THE COURT:** Lawyers, the court reporter says you
12:01:31 13 have to identify themselves. There are so many lawyers here.
12:01:35 14 Just say, you know, who you are, I mean. If it's someone
12:01:44 15 other than.

12:01:55 16 **MR. LIFRAK:** Michael Lifrak.

12:01:57 17 Your Honor, would it be possible to take a
12:01:58 18 lunch break? I think I could cut it down.

12:02:02 19 **THE COURT:** What time is it now?

12:02:06 20 **COURT CLERK:** A couple of minutes after noon.

12:02:08 21 **THE COURT:** Oh, it is. All right, we'll take the
12:02:13 22 lunch break.

12:02:14 23 I may have a couple of things to take up with
12:02:16 24 the lawyers. So, how about if I give you until 1:15? Is
12:02:23 25 that okay? All right. Thank you.

(Following proceedings held outside the presence of the jury.)

THE COURT: So, what should I be thinking about instead of eating lunch today? What problems are on the horizon? I know there is the witnesses that we mentioned yesterday, if I remember their names --

MR. WOOD: Mr. Stanton and Mr. Ellis.

And here is the issue arising from that discussion. Upon reflexion last night, in terms of how to proceed, in light of the objection and the Court's stated comments, which were legitimate, we decided not to bring Martin Ellis. We're only going to bring Rick Stanton.

The problem that created is a gap in the witness. I had planned to use tomorrow Sam Teller, who is under subpoena. And now when I finish my case, I still need Sam Teller.

Mr. Spiro has said that he doesn't want us -- and I understand -- he doesn't want us to use him by deposition. He wants us to bring him live. And so that would require his agreement, and he's given it, and with the Court's approval, that I be allowed to take Sam Teller out of order. In other words, not rest my case but keep it open until tomorrow, I can examine Mr. Teller.

THE COURT: All right.

MR. SPIRO: Not an issue.

12:04:29 1 **MR. WOOD:** I'm sorry?

12:04:30 2 **THE COURT:** So, that's agreed upon.

12:04:33 3 **MR. WOOD:** With your approval.

12:04:35 4 **THE COURT:** Yes.

12:04:35 5 **MR. WOOD:** The only other issue, and it can be
12:04:38 6 done now that Mr. Musk is gone, it's not a matter of going
12:04:41 7 back to him, but I would like an opportunity, Your Honor,
12:04:44 8 before --

12:04:47 9 At the time period that you believe is
12:04:50 10 appropriate, I have a very brief proffer of evidence to make.

12:04:52 11 **THE COURT:** I want you to have that opportunity,
12:04:54 12 and I thought you wanted to make a proffer regarding the
12:05:00 13 question to Mr. Musk: Would he hire someone who's a
12:05:09 14 pedophile?

12:05:09 15 Is that the subject?

12:05:12 16 **MR. WOOD:** It is, and that question, and one more
12:05:16 17 that I wanted to make a proffer, because it's relevant to the
12:05:17 18 issue of damage.

12:05:18 19 **THE COURT:** All right, then, why don't you, if you
12:05:20 20 can, make that complete proffer now if you wish.

12:05:23 21 **MR. WOOD:** Thank you, Your Honor.

12:05:25 22 I proffer that Mr. Musk in response to the
12:05:28 23 question of: *Would you hire a pedophile at Tesla?* Would
12:05:34 24 testify: *No, under no circumstances.*

12:05:37 25 I would then ask him whether Tesla or any

1 other corporation that he's in charge of would hire as an
2 employee an individual to whom Mr. Musk or his company had
3 received information from a reliable source that the person
4 under consideration had been accused or there were rumors
5 that the person was a pedophile? And I believe he would say:
6 *I would not hire him until the company verified whether the*
7 *rumors or accusations were true or not, because we would not*
8 *want anyone in our companies to be working with a potential*
9 *pedophile.*

10 That I believe goes to damage as well as Mr.
11 Musk's state of mind as to the impact of "pedo" or
12 "pedophilia" upon Mr. Unsworth.

13 That concludes my proffer, Your Honor.

14 **MR. SPIRO:** Just very briefly. Three things: One
15 is, they're not seeking business damages, they're not seeking
16 loss of jobs, that's not one of the damages they're seeking,
17 so it becomes wholly irrelevant.

18 Second is, even if they were, it's a 701, 702
19 issue. He's not any sort of expert on --

20 **THE COURT:** Who's "he"?

21 **MR. SPIRO:** "He" meaning Mr. Musk. On the
22 hirability of a person in that circumstance.

23 And then third is, it's just misleading
24 because it blurs this sort of fact/opinion distinction, and
25 we would have been going back and forth, even if he had asked

12:07:21 1 that question for 30 minutes of: *Okay, well, if you knew*
12:07:23 2 *someone for a fact was committing the crime of pedophilia, of*
12:07:28 3 *course you wouldn't hire them. And no one is going to argue*
12:07:28 4 *otherwise to the jury.*

12:07:30 5 But if someone had been called an insult of
12:07:32 6 pedophilia, have been referred to as "pedo guy, would you
12:07:35 7 still hire them? And he would have said yes.

12:07:37 8 And so we've moved the ball not one inch.

12:07:43 9 **THE COURT:** I would see you, let's say 1:05, okay?

12:07:50 10 **MR. WOOD:** Yes, Your Honor.

12:07:51 11 **COURT CLERK:** All rise.

12 (Noon recess.)

13 (Reporters switched.)

14 ~ ~ ~

C E R T I F I C A T E

I hereby certify that the foregoing is a true and correct transcript of the stenographically recorded proceedings in the above matter.

Fees charged for this transcript, less any circuit fee reduction and/or deposit, are in conformance with the regulations of the judicial conference of the united states.

/S/Anne Kielwasser

Anne Kielwasser, CSR, RPR
Official Court Reporter

12/04/2019
Date

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